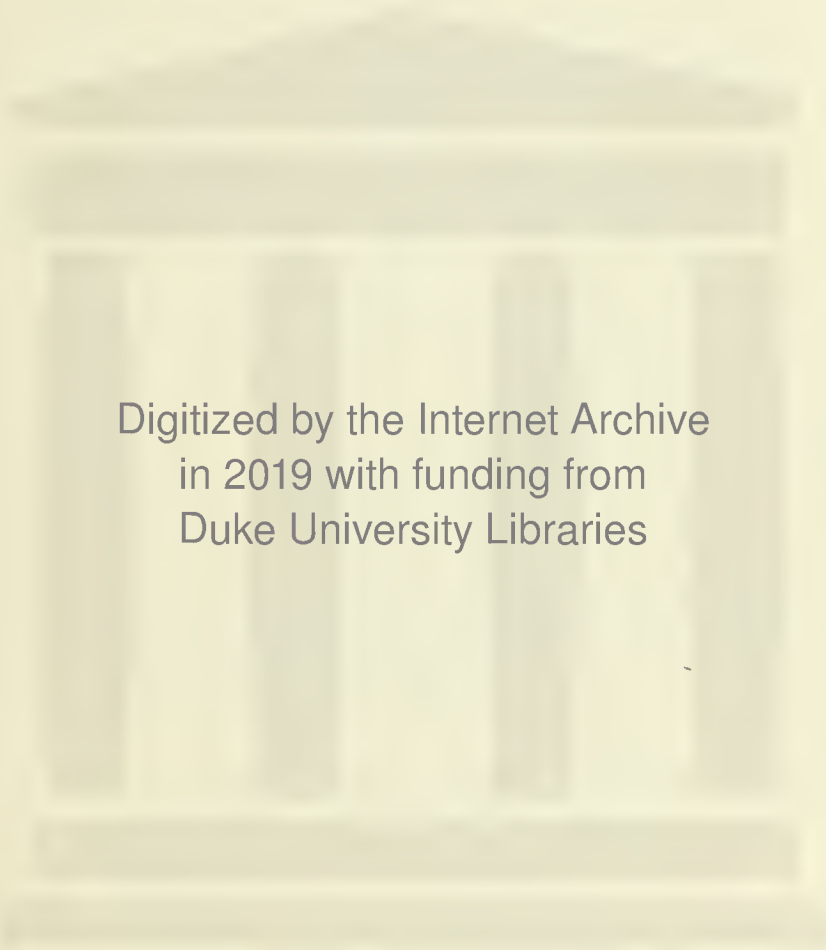
DUKE
UNIVERSITY

LAW LIBRARY



Digitized by the Internet Archive
in 2019 with funding from
Duke University Libraries

https://archive.org/details/trialofwilliambe00pike

3.
94/9

TRIAL

OF

WILLIAM BEALS & CHARLES G. GREENE,

FOR AN ALLEGED LIBEL, PUBLISHED IN THE

BOSTON MORNING POST,

ON

ALFRED W. PIKE,

PRECEPTOR OF THE TOPSFIELD ACADEMY,

AT THE

NOVEMBER TERM OF THE SUP. J. COURT, AT SALEM,

BEFORE

HIS HONOR JUDGE PUTNAM.

BY THE REPORTER OF THE BOSTON MORNING POST.

BOSTON:
PRINTED BY BEALS & GREENE:
1835.

4/21.132
General Library
Donor

TRIAL FOR LIBEL.

ALFRED W. PIKE *versus* WILLIAM BEALS AND CHARLES G. GREENE—DAMAGES LAID AT TEN THOUSAND DOLLARS.

PRESENT.—Hon. SAMUEL PUTNAM, Associate Justice of Supreme Judicial Court, Presiding.

JURY.—*Andrew Lunt*, Foreman; Miles F. Griffin, Amos Gould, William Hook, Samuel Ireson, Samuel Jenkins, Jr., Daniel Leach, Jacob Newhall, Jr., Thomas Payson, Wells Smith, Israel Trask, James Whittier.

COUNSEL.—*Rufus Choate* and *Asahel Huntington*, Esqrs., for the Plaintiff.

Leverett Saltonstall and *George Wheatland*, Esqrs., for the Defendants.

This prosecution grew out of the publication, in the Boston Morning Post, of the following communication, on the 2d of May, 1835:—

"BRUTAL CRUELTY.

To the Editor of the Boston Mornnig Post:

Sir—A case of unparalleled cruelty has come under my observation, which I hope, for the sake of humanity, you will give a place in your paper. A child 8 years old, (Sarah B. Jay) was placed under the care of a Mr Pike, schoolmaster, and member of Mr Winslow's church, with a promise on his part to bring up the child as he would his own. Mr P. removed to Topsfield, Mass., last autumn, since when the child has suffered the utmost cruelty—her food has been chiefly Indian meal and water—she has been compelled to sleep on straw, in an upper room, with scarcely covering enough to keep life in her—and during the last rigorous winter exposed so as to freeze her feet and hands badly. Finally, Mr P. sent word to her mother that he had put her in the *Alms House*, where she was very comfortable and could remain if her mother chose. But her mother, feeling indignant at such conduct,

desired Mr P. to send her daughter home. He complied with the request, and she arrived at her mother's, a day or two since, hungry, half naked, and reduced to the lowest state of wretchedness."

About a week subsequent to the appearance of this communication, the following certificate, in reply to it, was published in the Essex Register, from which it was copied into the Post by Mr Greene, who subjoined to it the editorial strictures which accompany it:—

"*From the Essex Register.*

"BRUTAL CRUELTY."

Messrs Editors—Having seen in the Boston Morning Post, of May 2d, 1835, an anonymous communication, headed "Brutal Cruelty," accusing MR PIKE, of this town, in several particulars in respect to his treatment of a young girl, *Sarah B. Jay*, who has lived in his family during the last five or six months, and who has been recently returned to her mother in Boston. We the undersigned, have availed ourselves of such means, as we consider sufficient to authorize us to form and express an opinion in the case—and accordingly certify that we are satisfied that there has been no cause of complaint against Mr. and Mrs. Pike, in respect to the girl. We are satisfied that she was well fed and clothed, and comfortably provided for on their part. Her sickly appearance and diseased feet, we consider a necessary consequence of her own personal conduct, which was, for more than two months previous to her being placed at the disposal of the Overseers of the Poor of Topsfield, filthy and disgusting in a degree we have never known equalled. And therefore, we view the communication alluded to as slanderous in the extreme. We have the fullest confidence in the kindness and attention of Mr. and Mrs. Pike to all under their care.

N. CLEAVELAND,
JACOB TOWNE,
MOSES WILDES,
R. A. MERRIAM,
JAMES F. McEWEN,
NATHANIEL PERLEY,
JEREMIAH STONE.

Topsfield, May 6, 1835."

"Sarah B. Jay is eight years of age—Mr Pike, took her under a promise to treat her with as much kindness as he would one of his own children. Is it a sufficent excuse for the present condition of the child that she was unclean in her habits, or froward in her disposition, providing such are the facts? It certainly was the duty of Mr and Mrs P. to enforce a degree of cleanliness upon her sufficient to prevent the breeding of disease and vermin, or else return her to her parents, and not suffer a little girl eight years of age to continue in a state of filth which has destroyed her health and strength for life, even if it should be continued to her, which is extremely doubtful. Her feet have been *frozen*—she says this was occasioned by a want of bed clothes during the severe weather last winter; but Messrs Cleaveland & Co. consider the operations of the frost "the necessary consequence of her own personal conduct." Messrs. Cleaveland & Co. are satisfied that the child was "well fed and clothed"—the clothes she received from Mr Pike,

during six months, including the last severe winter, consisted of one blue, short-sleeved, cotton frock—an old knit shawl,one or two pairs of stockings, and a second-handed pair of shoes—thus clothed she returned to her parents, during one of the coldest days of the present spring, in a weak and exhausted state, from the alms house, where Mr Pike placed her !—Is this the kindness he would show to his own child ?—Is this "comfortable" clothing ? Would Mr Cleaveland consider it so for his own child, if he has one ?—Certainly not, and no man of common sense and common humanity would say it was—we are unacquainted with Mr Cleaveland and his associates.

The above "certificate" does not relieve Mr Pike in the least fom his responsibility in this affair—the child is an object of suffering wretchedness—she resides in Myrtle street and can be seen by any one—her parents are poor, but honest, respectable, industrious people—we know nothing of Mr P. more than we have heard within a few weeks, and have no other object in following up this subject than to expose, what appears to us to be, conduct of the most cruel and censurable character. We understand that several gentlemen of wealth have interested themselves in the affair, and that it will probably undergo a Judicial investigation."—*Boston Morning Post, May* 14.

It will be observed, that in the preceding editorial comments, Mr. Greene reiterated, generally, the charges against Mr. Pike contained in the Communication of May 2, and for this reason Mr. Pike, as his counsel states, brought his action for Libel. The trial commenced at Salem, on Monday, November 23, 1835, before the Supreme Judicial Court.

As soon as the Court was organized, a motion was made by Mr. Huntington, that permission should be granted to take the deposition at Topsfield, of Mrs Martha Williams, aged 74, the mother-in-law of Mr. Pike, who made an affidavit, that she had been suddenly taken sick, and was unable to attend Court. This application was resisted by Mr. Saltonstall, on the ground that Mr. Pike's affidavit was not accompanied by the certificate of a physician; that she was a very material witness, and that it would be necessary for the defendant's counsel to be present when the deposition was taken, and would occupy a whole day; that if it should appear, by a certificate that she was too sick to attend at the present term, it would be a sufficient ground for a continuance to another term. The court, however, was inclined to think that the deposition ought to be taken, and appointed Mr. Williams, of Salem, to take it.

Mr. Huntington, for the Plaintiff, then opened the case, by reading the writ, consisting of two counts, reciting at length the alleged libellous publications, accompanied by the usual inuendoes, and charges of malice, wickedness and falsehood.

The defendants pleaded the general issue, as to the malice, and filed seven pleas in justification, alleging in technical form, that the

statements declared on as libellous, were true, and adding two other matters, not alluded to in the publications—to wit, that said Pike compelled the said Sarah B. Jay to eat *assafœtida* and her own *excrement*, and that therefore he ought not maintain his action against the defendants.

" You see, gentlemen of the jury," said Mr. Huntington, " from hearing the writ read, and the pleas filed in answer, and also by your knowledge of the character of both parties in this suit, that this is a case of no usual importance. The libels contain charges of a most aggravated character, and deeply implicating the conduct, reputation and standing of the plaintiff; and the defendants allege in their pleadings that these charges are true. If the charges are not true, then do they constitute one of the most atrocious libels ever published ; if true, then ought the plaintiff to be excluded from the society of men. The libel, or libels, are in every variety of words, and you will perceive that the pleas contain other matters not in the libel.

The plaintiff is a farmer's son—a native of the County of Essex, of hitherto unblemished character—a teacher of youth for upwards of twenty years ; and a husband and the father of a large and interesting family. Although he brings the action, it is himself that is on trial—he is now to be tried for his life—for every thing dear and valuable in life. For this reason, we shall feel it to be our duty and our privilege, in answer to these infamous and false charges, which we regard with abhorrence, to put in his general good character, because he owes it to himself, to his family, and to the trustees of the respectable institution over which he is appointed. We shall call in gentlemen from different parts of the county, who have known him twenty or thirty years, to prove that he is a most moral, honest, and just man, and that he has hitherto conducted so as to be much respected, and to be altogether above suspicion." Mr. Huntington recapitulated the charges contained in the first communication, and continued.—" The matter would never have reached this tribunal, gentlemen, if the defendants like just and honorable men, who entertained a proper regard for character, had paused, or published the certificate without any unfair comments. I have remarked, gentlemen, that when this murderous libel was published, the plaintiff was a preceptor of the Topsfield Academy—it was a dagger to himself, to his wife, and to his children. The article was read far and wide—he was in danger of being overwhelmed at once with the universal indignation of the public—he was struggling for life ; and to keep his head up it became absolutely necessary to do something immediately. He could not wait the tardy operation of the law, and he procured an investigation of the subject on the spot, and if the defendants had simply published the reply by the gentlemen of Topsfield, that Mr. and Mrs Pike were not blameable the matter would have rested there. We should not have commenced this prosecution, if they had pub-

ished the reply unaccompanied by false and malignant comments—lisingenuous and unfair.

In these comments, reiterating and enlarging the original charge, aggravating it—dipping his pen in gall in every line, the defendant publishes a libel in every particular worse than the original one. There is malice to be seen in every line. It is manifest that Mr Greene meant to destroy Mr. Pike. In the most artful and ingenious manner, he makes Messrs. Cleaveland and Co., as he slightingly calls them, say that the freezing of the child's feet was a necessary consequence of her own neglect. In this way, he gives a perfectly unfair answer, and takes back nothing; but he goes on and argues the matter in a most jesuitical manner, and concludes by saying that the certificate does not relieve Mr. Pike from the imputations resting on him.

With regard to the Indian meal, said Mr. Huntington, I know not whether Mr. Pike be a Grahamite or not—he looks like a good liver himself, gentlemen as you may see; but whether he be a Grahamite or Anti-Grahamite, the man who could keep a child on Indian meal and water five months, and be guilty of the other acts charged upon Mr. Pike, must be a brute and a beast; and if the defendants come within a thousand miles of proving the truth of them, I shall feel it to be my duty, as a public officer,* to present him to the Grand Jury, friend as he is of mine, and has been, for the last twenty years.

Mr Huntington, after commenting upon "the injury necessarily done to the plaintiff, by the defendants in their respectable journal, by circulating the libel throughout the country, stated the facts which he would be able to prove in refutation of the charges brought against the plaintiff in the Post. He would show, he said, that while Mr Pike kept a private school in Boston, the mother of the child, representing herself to be a very poor woman, very earnestly entreated Mrs. Pike to take the child—that her husband, a Mr. Howard, was hostile to the child, and that her living at home created great disharmony in the family,—that the child was fully as much to blame as Mr Howard, in their domestic dissensions; that she was guilty of falsehood and obstinacy. In this way, Mrs. Howard worked on Mrs. Pike's feelings, and proposed to have the child bound to her. Mr Pike and his eldest daughter was very much opposed to taking the child to Topsfield, but Mrs Pike, being interested for her on account of her mother, prevailed on Mr Pike to take her.

After she went to Topsfield, symptoms of scrofulous humours manifested themselves on the child's person, in consequence of which salts were administered to her, and afterwards she was furnished with gruel, and this (said Mr Huntington) is what is meant

* Mr. Huntington is the Commonwealth's Attorney, for the District, in which Essex County is included.

by the Indian meal and water, they talk about. In February, Sarah, the child, became unclean in her personal habits, in a most extraordinary degree, and it became necessary to make up a straw bed for her, but she was so well supplied with bed clothing, that if Mr Pike had been charged with having attempted to smother her, the charge would have come much nearer the truth, than that which has been preferred against him ; and so far from having an insufficient supply, she had seven thicknesses of covering. The child, however, continued in its offensive habits, and to such an extent, that Mrs Pike was made sick by her conduct, and told her husband that she could not live in the house with her any longer. She was then put into the alms-house, because Mr Pike did not know that Mrs Howard was in a situation to receive her ; for Mrs Pike remembered her mother's declaration, that her children had cried themselves to sleep for want of bread, and she knew that Mrs Howard expected to be confined. He expected to show also, that notice was sent to Mrs Howard when her child was put into the alms-house; he would also show, that Sarah had been afflicted with chilblains for several years; that the morning she left Boston, her father bought her a box of ointment for her feet, which were then sore with chilblains; that at Topsfield she had a sufficient supply of clothing, and wore India rubbers on account of her sore feet, and that when Mr and Mrs Pike went to the alms-house with her, she was comfortably clad, and was sent home to Boston in the same clothes; and so far from eating nothing but Indian meal, that she ate more animal food than any other member of Mr Pike's family. Mr Huntington closed his opening statement by some remarks upon the responsibility incurred by the conductors of the public press in proceeding to redress real or imaginary private wrongs, without due deliberation and careful investigation, and compared their mode of operation, in thus putting a party on trial, without affording him an opportunity of defending himself, to the summary proceedings of Judge Lynch. A man, denounced by the press was in fact tried and executed, before he could possibly obtain a hearing—a species of Lynchism, he was sure, that was not yet very popular in this ancient Commonwealth of Laws.

The Court adjourned at half past four, in order to afford the counsel on each side to proceed to Topsfield and take Mrs Pike's Deposition, but when they arrived there they found her quite well, and able to come to Court, and testify regularly, and therefore her deposition was not taken.

Tuesday, Nov. 25.

Mr Huntington proposed to introduce witnesses to prove Mr Pike's general good character.

Mr Saltonstall objected, because the defendants did not propose to put Mr Pike's general character in issue, and cited the opinion

of Lord Abbott, that in a case of libel, it was not in the power of the plaintiff to go into general character, unless his general character was impeached by the defendants.

The Court inclined to the ground assumed by the defendants, and deemed such proof unnecessary, as the jury, by presumption of law, must take the plaintiff's general character to be good, until it was impeached by the defendants.

After a short consultation, the Counsel for the Plaintiff waived the point, and proceeded to call witnesses, as to Mr. Pike's profession, and standing as necessary in order to enable the jury to estimate the damages he must in all probability sustain, if the facts contained in the libel were believed to be true.

Twelve witnesses were accordingly examined and cross-examined on this point, and it appeared from their testimony, that from the year 1815, up to the present time, Mr. Pike has kept classical schools, and fitted young men for college, in Newburyport, Framingham, Woburn, Rowley, Boston, and Topsfield. Three stated that difficulties existed at Framingham, Newburyport, and Woburn, and that the numbers of students fell off, prior to his leaving those places. The nature of the difficulties referred to did not appear, and the jury were cautioned by the court not to draw any inference from that fact unfavorable to the plaintiff. Dr. Noyes, of Boston, attributed a falling off of the numbers, at Mr. Pike's private school, in Boston, "to the *pressure*,"—i. e. the removal of the deposites. He said the effects of the pressure were also felt in the other private schools in the city.

[In connection with this point, but on a subsequent day, the defendants introduced witnesses, who testified that complaints existed about Mr. Pike's mode of discipline; they testified decisively, that "there was no diminution of the public confidence in Mr. Pike as an able and accomplished instructor; but there was a diminution of confidence in his mode of discipline." Mr. Marston, of Newburyport, after some consideration, said he believed, that the dissatisfaction at Newburyport related to his mode of treatment of his female scholars; but he never heard any thing against his *humanity*.]

At this stage of the trial, it not being necessary for the plaintiff to prove the falsehood of the libel, until the defendants had introduced testimony to substantiate its truth—

Mr. Wheatland opened for the defence, by remarking that the case was of vast importance to the defendants, on account of the great sum claimed for damages. After premising that most men had a good general character, and also something unfavorable in their particular character, Mr. Wheatland observed that this was the case with Mr. Pike—his general character was good, but he had a bad particular character, as the facts in the present case would prove. Mr. W. then went into a general statement of the facts which the de-

pendants expected to prove in justification of the publications declared on. He said they would be able to show, that neither Mr. Beals nor Greene wrote the article, and that it was published for the most humane of purposes; that Sarah B. Jay, only eight years old last January, has no father; that her mother proposed to Mrs. Colby to put her into an asylum; that Mr. Colby took the child into her own family; that while with her, the child was in good health and condition, and neat, tidy and clean; that Mr. Pike applied to Mrs. Colby for a young girl, and that Mrs. Colby referred her to Mrs. Howard, Sarah's mother; that the first application was made by Mrs. Pike and not by Mrs. Howard; that Mrs. Howard refused to have Sarah bound to Mr. Pike; and that she was delivered to Mr. Pike in a good condition in every respect, and lived with Mr. Pike three or four weeks before they went to Topsfield, without any change in her habits. At Topsfield, and while at Mr. Pike's, she became haggard, pale and sick, lost her little toe, and had her feet split open, as he would show, by cold. In this state she was turned into the poor house, because Mr. Pike, as he himself said, was afraid she would die on his hands. When she was put into the Alms-house at Topsfield, which was filled with vermin, she was clad sparely—with a pair of boy's shoes down at the heel, a thin calico gown, with short sleeves, a woollen garment so ragged and filthy as not to be fit for hogs to toss about in a sty; and when the overseers inquired of Mr. Pike concerning her clothes, he told them there were none for her. In this state the girl was sent home to her mother, and the physicians, upon examining her, were of opinion that she could hardly be expected to live. Among other neighbors, Mr. Sweeney saw the child at her mother's, and hearing the facts, embodied them into an article, and sent it to the office of the Morning Post, and Mr. Greene, upon going and making inquiries himself, which satisfied him, that there was a good foundation for the article, published it. Shortly after the appearance of this Communication in the Post, which came to the knowledge of the people in Topsfield, the Trustees of the Topsfield Academy, to contradict it, held a meeting in the Academy, and brought before them a domestic in Mr. Pike's family, of 14 years of age, and took her deposition, contrary to the late statute against extra-judicial oaths, and upon the strength of this deposition, so unlawfully taken, and without the presence of a single friend to the little girl, the trustees issued the remarkable certificate, which drew forth the second article in the Post, which has been paraded before you gentlemen of the jury, as a more infamous libel than the first one.

In addition to what has been stated, we shall be able to show, said Mr. Wheatland, that the little girl was never permitted to go to school, to church, or even to a Sabbath school, and perhaps Mr. Pike had good reason for not sending her to church, for he might

well fear that she might hear there, "that he who oppresseth the poor, is a reproach to his Maker." But this is not all, gentlemen: there are still one or two things which I feel it to be my duty to allude to, however repulsive it may be to you as well as myself. You have heard it read in the pleas that Mr. Pike compelled the child to eat *assafœtida* and even her own *excrement*. Gentlemen, this is literally true, and we shall prove it to you beyond the hope or suspicion of a doubt.

Gentlemen, my brother Huntington, in his opening, told us, that if we came within a thousand miles of proving the truth of the facts alleged, he would hold himself bound to call his client to an account before the Grand Jury. We accept the challenge; for we shall come a little nearer—aye, a great deal nearer than a thousand miles to the facts charged—and I do now, and shall, hold him to his promise—to the strict redeeming of his pledge to the letter; but if we come only within *ten thousand miles*, gentlemen, we shall expect your verdict; and if we make out our case, against Mr. Pike, the indignation of men must follow him here, and the wrath of God, if he be just and true, will follow him hereafter."

—

Testimony of the Witnesses called by the Defendants to prove the truth of the charges contained in the Publications, alleged to be libellous.

Mrs. Sarah Colby, [of Boston, and one of the managers of the "Childrens' Friends Society," who have an asylum in Green Street.] In 1834, in the fall, Mrs. Howard came to me to see if I could get her child into an asylum, and said that she was not able to take care of her; that her age was eight years, and had no father, &c.—After hearing her story, I told her I would confer with another lady who was associated with me, and let her know if we could. A short time after Mrs. Howard applied to me, a young lady called upon me to know if a child could be obtained from an institution which I was connected with, to live with her mother, whom she stated to be a Mrs. Pike—I told her we had none then. It did not then occur to me, that Mrs. Howard's child would answer—I never thought of her in connexion with Mrs. Pike's application at that time—the reason Mrs. Howard called on me, I suppose was, because I was visiting manager of the Institution for that month—there being twelve managers. On Saturday afternoon, I called at Mrs. Howard's residence, and informed her that the managers had concluded it would not be expedient to take her child into the institution at that time; but I told Mrs. Howard to prepare *Sarah* for the Institution against the time when we should be able to take her. On Monday, I think, it was of the next week, Mrs. Howard came to me with Sarah, and having in her arms another child—she appeared much distressed, and said she did not know what to do with her, as her husband objected to support Sarah. I told her again we could not take the little girl

into the institution. She then asked me to take her myself,—I told her I could not take upon me such a responsibility. The mother's situation, however, interested me so much, that I concluded on the whole, that I would take the child, and do what I could to provide her a place. The mother told me frankly at the outset, that she would not deceive me about the child, and that she had been very much exposed to vicious habits—this was before I concluded to take her—she said, she thought she would require watching—I did so, and kept her chiefly in my own room, under my eye—I found her very handy at the needle, and she did little jobs about the house with remarkable facility and neatness—being careful, after being cautioned not to soil her clothes with her work, and would come up to me cheerfully and show me that she had kept them clean. She was a clean child, and her mother had made her as clean and neat as her circumstances admitted of. Mrs. Pike's daughter called again to inquire if I had found a girl. I thought it a good opening for Sarah, and referred the girl to Mrs. Howard. I felt confidence in Mrs. Pike, on account of the person who had referred her to me. I had an interview with Mrs. Howard, about giving the child to Mrs. Pike—I told her how much I had become interested in Sarah, and that I should always feel an interest for the child While I was conversing with her, Mrs. Pike came in, and the child was given up to her. Mrs. Pike promised to clothe her well and comfortably. I did the chief part of the talking, and dont remember exactly what Mrs. Howard said to Mrs. Pike about Sarah.

Cross Examined.—Mrs. Howard told me that Sarah had been exposed to see vicious people, or children, in some neighborhood, where she had been living—and said she was a very bad child—I felt much struck by such a remark from her mother, and I asked her what she meant—she then gave me to understand that her word was not to be relied on. In consequence of what her mother had said about her, I watched her narrowly—I left little articles about, and money, in places where she would be likely to see it, but always found every thing in its place—her propensity to talk was rather greater than common. To Mrs. Pike I stated all these facts in the same manner I have now stated them. I told her the child needed gentle, but firm treatment—that her feelings were such as to require gentle treatment—her personal habits were clean. The child appeared to be of an amiable disposition, and my feelings had become quite enlisted for her. I recollect expressing to Mrs. Pike a great deal of interest for the child—I recollect saying to her, that I should be glad to hear how she got along. I dont know that I asked Mrs. Pike to WRITE to me, but I felt the yearnings of a mother for the child, and expressed my desire to learn how she got on several times—over and over again. I believe I can with perfect safety say, that I never saw any thing vicious in her.

Direct examination resumed.—Last spring I was called upon to go and see the child, which I was informed had been brought home to her mother—she was very much altered—very much emaciated, and pale—there was much excitement prevalent about her—I recalled in the evening with Dr. Flint. Her feet were very sore;—one of her toes—the small one—was nearly off;—there were two very bad places under one heel, like deep gashes spread open—around her ankles there were black and blue spots—she looked like a sick child. As I sat and rocked her in my arms, and looked upon her, it did not seem as if she could live. Her mother did not say much, though she appeared to feel much, and seemed much excited. Her mother appeared to be an amiable, gentle, and kind woman—a woman who had suffered much affliction—of an uncomplaining disposition, not disposed to overstate facts—I was much struck with her equanimity, while others were so much excited—the excitement that existed was not boisterous, but partook of a solemn character. While I was there, there was generally a coming and going of persons. When Mrs. Pike took her, she had no sores on her feet. She continues feeble, but having weak eyes, which are bandaged, she does not look so much like a well child, as she might, if her eyes were not sore. I called once at her grandmother's to see her.

Cross examination resumed.—We did not think it expedient to admit her into our institution in the first place, because our funds were small, and we thought she was old enough to do something for herself; and second, that as she had been exposed to vice—to see vicious children, and be among them—I thought it improper to have her introduced among younger children, as she might exert a bad influence; but if she had been younger, notwithstandnig her supposed habits, I think we should have taken her. I understood from her mother, that Mr. Howard thought it was too great a burden to maintain her. Mrs. Howard has had three husbands, and Sarah was the child of her first husband, and she had another by the intermediate husband, and expected to be confined again. Mr. Howard's unwillingness to maintain Sarah, gave her mother extra anxiety—she said she was much pressed down, and found it hard to get along. I kept Sarah in my chamber so as to be able to see what her character and disposition was—I found her quite intelligent, for a child of her age, and class.

She sang a good deal. As near as I can recollect, I told Mrs. Pike what I have now stated. Her mother told me I think, that she had been living at three places. Her mother said, "I will not deceive you about the child," at the very time she applied.

Mary F. Howard—I am the mother of *Sarah B. Jay*.—She was eight years of age last February.—Mr. and Mrs. Pike called

on me one evening, a little after candle light, and said they understood at Mrs. Colby's about my having a child, that I wanted a place for—we talked some time, and it was agreed that we should meet at Mrs. Colby's. I went to Mrs. Colby's, and stopped some time before Mrs. and Mr. Pike came—I cant recollect all that was said—only I spoke of the motherly kindness that the child ought to have to make her a good girl, and an amiable woman. Mrs. Pike took the child, and told Mrs. Colby she would send to her and let her know how the child got along. It was in September. After Mrs. Pike took her, I visited her off and on—near the last of their being in Boston, I called and observed that the child had creatures in her head, and I spoke to Mrs. Pike's girl about it, and said it was something strange—that she was not in the habit of having them, and wished her to look after it.—Mrs. Pike said she calculated to bring her up the same as her own children—and to give her an education sufficient to enable her to keep a common school—or to put her to learn a trade, as soon as she was old enough to choose one, if she preferred a trade to keeping a school. The child was in good health, and had been for three years before—she was clean—I was always particular about keeping my children clean. I heard nothing directly from my child after she went to Topsfield, till one day two gentlemen called on me, who said they were overseers of the Topsfield almshouse, and told me my child was in the alms-house, and had been there a week—one brought me a letter from Mr. Pike, he said—I was so agitated that I could not read the letter, and carried it to Mrs Sweeney to read it for me. The gentlemen asked me what they should do with the child—I told them I wished to have her brought immediately home—this was on a Wednesday, and she come the next Monday, which was the 27th of April.

The child was very weak, very feeble, and very cold.—she could not raise herself up strait, as she was in the habit of standing—she was so poor, that her bones showed through—her hip bone cut through the skin so as to make a sore of the size of a fourpence. On her little toe there was a small dead lump like dough, which came off after a few days, and left nothing like a toe—there were bruises on her body and like the blows from a stick. I poulticed her feet. She was so sick that I had to lift her out and into bed like an infant.—The next day Doctor Flint came, and gave me some ointment for the sores on the child's feet and hands—Dr. Jackson and Dr. Strong also came—Dr. Shattuck prescribed for her—I did not send for either of those gentlemen—I sent for a physician, but he did not come—I dont recollect his name—For a fortnight after she returned, I had to take her out and in bed, like an infant.—The house was constantly filled with people coming to see the child. Her stomach was very weak, and she threw up every thing she ate at first—but had a great appetite.

[Mrs. Howard here exhibited the articles worn home by Sarah, viz . a blue check gown, short sleeves; green shawl, loose network, that peas might be shot through; shoes long enough for a woman, and down at the heel. She wore home the same bonnet and petticoat she wore away.] Testimony continued—"The weather was clear and pleasant, but very cold, for the season. She had a change of linen when she went away—two old calico gowns—one apron—one tyer—new pair of leather shoes, but I dont recollect about her stockings. I offered her a cloak, but Mrs. Pike thought I had better keep it for my other children, and said she would provide her with one. She had no change of clothing when she returned—no bundle—nothing at all. Mrs. Pike spoke to me about binding the child, but I objected. Mrs. Pike said, if the child was bound to her, she should be obliged to take care of her in health and sickness. I said if she was sick I should choose to take care of her myself; and if Mrs. Pike should become dissatisfied with her, she would not be able to take care of her as well as she did her own, because it would not be natural. Afterwards I made inquiries about the nature of binding, and when she spoke of it again, I said the child might be bound.—When she came home, her head was filled with small lice—her hair was knitted, and in some places worn off, and cut off short.—There were bald places on her head—I didnt think she would live a week, and that was the opinion of a number of others. Previous to going to Mrs. Pike's, she was at Mrs. Colby's, waiting till an opening was found in the institution.

She limped a few days before she went to Topsfield—I asked the oldest girl if Sarah's feet were sore, and she said they were with chilblains. Two seasons before, while she was living with Mrs Roff, she was troubled with chilblains, and I told her to put some cold cream on them, and I never heard of any trouble afterwards. Her feet were perfectly well when she went to Mrs. Colby's. She also lived with Mrs. Shepard, at Charlestown. All classes called to see my child—some of the most respectable ladies in Boston. I dont recollect how long she was with Mrs. Pike before they went to Topsfield. She went to Mr Pike's on the 24th of September.

She told me that her feet become sore by cold.

[Mr. Choate objects to the admission of the child's declarations, as evidence. Mr. Saltonstall contends for them, on the ground, that they would go to show, that Mr. Greene had not acted maliciously, in publishing the libellous article, and quoted a passage from one of the pleas, in which it is alleged, "that her feet were frozen, *as she says*, for want of bed clothes," and therefore the defendants had a right to prove what she said. The court thought the defendants might put in her declarations, to rebut the idea of

malice, and as part of the *res gesta*, but would reserve the point for further consideration.]

Mrs. Howard resumes—"The child said she had not had sufficient food—that they gave her cold Indian meal and water, and sometimes potato skins, and mouldy mince-meat. She said she slept on a straw bed on the floor, in an upper room with Sarah, the other girl [Sarah Knowlton] Mr. Greene called to see the child in the course of the first fortnight.

Mr Saltonstall—Mrs Howard, do you know who wrote the article which appeared in the Post respecting your child?

Choate—Stop Mrs Howard—we object to that question as immaterial; for it is no justification to the defendants that another person wrote the article.

Court—The defendants are responsible, and the question is is therefore immaterial.

Saltonstall—We contend that under the Statute of Justification, the fact would go to show that the defendant had no malice—we wish to show that another person wrote the article at the request of the mother, and thus will go to rebut malice.

Court—I think it may be admitted for that purpose.

Choate—This in our view would be on overruling the whole series of decisions, together with Alderman vs. French in which it was expressly decided, that nothing but truth is a defence; that the defendant was mistaken will not even mitigate under the general issue.

Saltonstall—I understand that under the statute of 1826, we have the full advantage of both pleas—the general issue and justification. The case of Alderman vs. French upset the whole series of cases before made, and it was on account of that very decision, that the statute was made. In the case in 5th Pick. it was held, that no general issue having been pleaded, the defendant could not avail himself of mitigating circumstances, and it therefore implied, that if he had pleaded the general issue, that the evidence might have been received.

Choate—It has always been held that under the general issue the truth cannot be given in evidence to rebut malice—the Statute in this respect has not altered the Common Law.

Saltonstall—The present is like any other action of tort. The defendants may show any thing, under the general issue, as part of the *res gesta*, which goes to show how much damages ought to be recovered, precisely as if no plea in justification had been made. We do not propose to show who the author is as proof of the truth of the article, but that the defendants did not publish it maliciously, and that they did it under such and such circumstances; and that though the defendants failed to prove its truth, they might still show in what manner the publication happened.

The *Court* proposed to take the papers and books containing the authorities referred to, for the purpose of examining this question, and the other respecting the girl's declarations, and announcing its opinion in the ensuing morning.]

Cross examination of Mrs. Howard.—I have a record of the child's age in my Bible—she was eight last February—I never said she was nine, or that I did not know how old she was. The day she started for Topsfield, I went into Mrs. William's chamber, and had a conversation with Mrs. Pike. She first proposed to have the child bound, and set several times to have the indentures ready—I never heard that there was any objections on the part of any member of Mr. Pike's family to taking Sarah—I told Mrs. Pike that the child had a weakness in her infancy, and that if she ever exhibited any effects of it, to attend to it and she said she would—and I mentioned to her about the chilblains.

I represented to Mrs. Colby, that the child was not with me, when I married my present husband, and he never expected to have to maintain her; I said my husband was quick and would sometimes throw out remarks which were very disagreeable. He was very partial to another child of mine, more so I think than to his own. Mr. Howard is my third husband—Sarah's father went away insane, and never came back—I do not know that he is dead, only from what I read in a paper. It is true, that I told Mrs. Colby, that my children had cried themselves to sleep for want of bread. The Overseer brought a letter from Mrs. Pike, but I burnt it immediately as soon as it was read to me. I spoke to Martha Pike and Mrs. Pike about the creatures in Sarah's head, and said it was unusual. Sarah was 4 years old when she went to Mrs. Shepherd's. Mrs. Shepherd's husband died, and being left a widow, she could not maintain her any longer.

I told Mrs. Pike that very frequently Sarah would commit little faults, and tell wrong stories about them—I said she was hard to govern, and had a bad temper, providing she had more than one master—I said she needed a steady hand, and wished Mrs. Pike to see to her herself. I was not particularly anxious to have her go to Topsfield—After she had gone, I regretted very much that I allowed her to go so far from me. I told Mrs. Pike I expected to be confined. Sarah came home about 12—she was alone—it was a very cold day, and I kept a fire all day. The first words she said were—"M'a dont beat me—and dont let father beat me." I sent for a Physician, but he did not come—I cant think of his name now. Her entire feet were running sores—that is, the lower parts of both sides—the upper part of the toes of one foot was sore. I did not represent to any one, that all her toes were like her little toe—I said a good many of her toes had similar sores. The child often had a quarter of a dollar or a nine-pence given her. She was not able to go out for six weeks or more.

Dr. Strong was her first Physician—he saw her three or four times—Dr. Jackson came after Dr. Strong—I did not send for either—I did not represent about the child so fully to Mrs. Pike as I did to Mrs. Colby—I told Mrs. Colby many things that I had heard from hearsay—that she had played with some children in the yard at indecent plays, while I was sick—I was sick a fortnight. I told Mrs. Colby that Sarah was a bad child, but I did not mean any thing great. I only meant that she required watching. I lived in that yard three or four months—Dr. Flint came the second night after she arrived, and gave some ointment for her feet—Dr. Strong came next—Dr. Strong came on a Monday, and I believe Dr. Shattuck the Sunday after. Mr. Greene came before Dr. Shattuck. I knew from Mr. Howard and the child, that he furnished her with ointment for her feet before she went to Topsfield—she limped considerably with one foot. Before Dr. Strong came, I thought the child could not live a week. The second day people came in to see her—and talked in the room in her presence, and some gave money to her—I received small presents for my children. She had a very craving appetite, but I did not gratify it. Mrs. Sweeney saw the letter before it was burnt—no one advised me to burn it.

Mrs. Colby re-called—the first time I called I did not see the child's feet—in the evening I called with Dr. Flint—he uncovered the foot—I thought at first, when I looked at it, that half of the foot was off. By "firm treatment," when I spoke to Mrs. Pike, I alluded to the talkative, lively disposition of the child—I listened to but little that she used to say, and of course did not charge my mind with what she did say. When I first saw Mrs. Howard, it was in a respectable looking place and so were all its appurtenances, but being in the third story was uncomfortable.

[Here the child was called to exhibit its foot, &c. to the jury, and the scars on her neck and shoulders. One joint entirely gone from the little toe of the left foot.]

Dr Joshua B. Flint—I went at the solicitation of my friend Mrs Colby, to see the child—I found her feet affected with ulcers in several places—the principal one was on the outer edge of the left foot—I recommended ointment to be applied till the physician sent for came. The little toe was implicated in the ulcer—about half of the toe—it might have been from chilblains, or from being frozen—I have no means of determining—such cases have been from neglected chilblains. The ulcer had the appearance of not being recent, but of long standing. She was very much emaciated, and of a sickly appearance in every point of view. I should have thought from her appearance, that she was suffering from chronic disease, or from hardship. Chilblains are produced by alternations of cold and heat—generally they are not attended

with a rupture of the skin—freezing is. [Dr. Flint examined the child's foot before the jury, and resumes]—one joint is gone from the toe—I never saw such a case from chilblains—have read of their becoming so from irritating influences.

Cross Examined—There is only one thing that leads me to the conclusion, that she was neglected—there were black marks around her ancles, which led me to ask her if she had not been tied by the legs, and she answered that they——[Dr. F. was not permitted to state what she said.] I should have thought her ankles had been tied, if she had not told me something which led me to think it was not so. Stockings continually wet with urine would be an irritating influence—next to pressure, in effect. Vicissitudes of heat and cold are the general producing cause of chilblains, and this is the reason why the children of the poor are more subject to them—and any exposure to snow water would aggravate them—also walking on them. I did not consider the ulcers scrofulous. Should think India rubbers good for them, if not too tight; if they fitted snug they would not be good—for common chilblains, stimulant applications are good.

Dr. Jackson.—Dr. Strong called on me to accompany him to see the child, with reference to inquiring if she was in consumption—I found her emaciated and fretful—with the appearance of having a chronic, organic disease. The conclusion to which we come was, that there was no evidence of any settled organic disease. The great local disease was in her shoulder, and foot—I cannot say positively that I examined the feet. She complained when any joint was handled—and exhibited considerable irritation both mental and physical.

Cross Examined.—Did not use the stethoscope to ascertain the the state of her lungs—did not discern any disease in the shoulder, she exhibited nearly or quite as much irritability when her other joints were examined—she manifested uneasiness at being moved—our examination lasted about twenty minutes—I never read of a joint being lost by chilblains—I know of no reason, why an ulcerated chilblain located on the toe should not remove the joint.

Mr. Choate.—You speak, Doctor, of her complaining as much when one joint was handled as another—did it occur to you, was it your impression, from any thing you saw in her or about the house, that she was making all these appearances of great bodily pain?

Mr. Saltonstall objected to the question entirely—it was asking the Doctor to express his opinion upon a subject that was not medical, and upon a point that had never been suggested before.

Choate.—We contend that a physician is a competent witness to answer the question—I mean to argue to the jury, that this

case is one of imposition from the beginning to the end to create an excitement, awaken sympathy and extort money from the number who visited her at her mother's. [See the testimony of Miss French, Dr. Strong, Mr Saltonstall's argument, and Judge Putnam's Charge.]

Dr. Jackson answers.—My opinion was, that the child was too sick to play a part.—It is not very rare for children of her age to be unable to retain their urine—paralytic affection may produce inability to retain the denser matter contained in the bowels—saw no appearance of paralytic affection—voiding of urine would increase the irritation of chilblains.

Wednesday, Nov. 25.

His Honor *Judge Putnam*, upon taking the Bench, this morning, observed, that since the adjournment last evening, he had had under consideration, and had examined the authorities, upon the question of the admissibility of Sarah's declarations, and had come to the conclusion, though the plea alleges that she said so and so, to exclude them; his Honor had also come, to the determination to exclude the evidence to show that Mr. Sweeney was the author of the communication, at the request of the mother. He was decidedly of opinion, that such evidence was inadmissible under either plea—the general issue, or justification.

Rev. Thomas Whittemore.—I have seen Sarah B. Jay,—saw her about three weeks after she was brought home, at her mother's house—went at the repeated solicitation of several gentlemen—the mother showed me the child's head, and asked me if I wished to see her feet—I said if it was not improper, I should—when she proceeded to remove the stockings and bandages, the child supplicated her not to—but the mother persisted, and I perceived the feet to be diseased up as high as the ankle—she seemed sickly and emaciated—her hair shaven off closely, as if from some application—generally quite close, but unevenly. The mother seemed an exceedingly tender mother, and appeared to be a neat woman.

Rev. Thomas Norris.—Sometime in April last, saw the child—she appeared to be in spasms—she looked out two or three times, and begged that I would not give her up to her master—her hair bald, and some places shaven close—the child was laboring under nervous excitement—her appearance was deathly—her bones and sinews seemed as if they would come through—the bones of her arms and ankles stood out in view. Feet all over in a state of inflamation—one foot much worse than the other—the little toe dead—there were several other people there—I called several days successively—her mother took good care of her.

John D. Sweeney [author of the communication]—I knew Sarah

B. Jay—her mother hired a room of me in Myrtle Street—I came home one dinner time and found my wife crying——

Mr. Choate.—You need not tell us about your wife's crying—What did you see?

Sweeney.—The child was emaciated, and sick—and much debilitated generally—her hair shaven off close—continued emaciated for some weeks—she had the appearance of having suffered considerable hardship.

Cross Examined.—I warned them out, and I warned all my tenants out, because I wanted the room—they did not pay all the rent—the rent was seven shillings a week—I cant tell how much of the rent was not paid—I never sued for it. Mr. Howard is a revolutionary pensioner, or a pensioner of the last war—he sticks up bills—they have three children—one a small one in the arms—I never knew Mr. Howard to be intemperate—I'm an Irishman—a coppersmith.

Mrs. Sweeney—I saw the child when she first arrived, on the 27th of April—I was the first person that saw her in the Stage alone—she was very feeble—I had to support her, to keep her from falling in the entry—there were marks on her legs—the flesh was swollen over her garters, so that they were dented into her legs, and left a very deep mark when they were uncovered—had on a short sleeve frock, pink silk bonnet, shawl, and boy's slippers—She was entirely destitute of flesh—one spot on the hip where the bone was through—her arms were but little bigger than my thumb—on her feet three large sores—on one heel, one on a big toe, and a little toe one continued ulcer—I think it was on Election day, that she went to her Grandmother's—she had been in my room once before she went to her Grandmother's—her mother took as much care of her as any one could take of a child. People called from morning till night for a fortnight—I saw no sham—I dont think she could have counterfeited—her spirits would sometimes come up a little, but they would soon go off and she would lay her head down.

Cross Examined—She did not play in the street, before she went to her Grandmother's—she might have crossed over—Mr. Howard and his family were quiet people,—never knew of any improper conduct.

Charles G. Singleton—On the second day saw the child at request of my wife—she was much emaciated—her appearance was frightful—her hair all stood erect.

Mrs. Sarah Davis—Sarah is my Grand-child—her father has never been heard from since she was a fortnight old. Before she went to Topsfield, I went with her mother to Mrs. Pike's—I heard

a conversation between Mrs. Howard and Mrs. Pike relative to bringing up the child—Mrs. Pike offered to educate her so that she might be able to get her own living in the way best suited to her constitution and convenience when she came of age—she said she wished to have her kept comfortable, and would endeavor to keep her so—would do as well by her, as she would wish any body to do by one of her own children, if they took one of her own children to bring up. If Sarah was sick, or any dissatisfaction on either side, she was to be sent home to her mother—Mrs. Pike said so. Sarah's health was good—her habits were the same as other children of the same age. I saw her the next day after her return to Boston—the flesh was bare on the hips—she came to my house on Election day—her father-in-law had to lead her—she laid on the sofa all day—she staid a fortnight at my house—the day after she returned to Boston, she had lice and nits in her head—I did not think she would live a week when I saw her first—Mrs. Howard's first husband went away in a state of insanity.

Nathaniel Perley—saw Sarah B. Jay in Topsfield, in October or November—her appearance was like that of any other girl—I was one of the Overseers of the Poor—in April Mr. Pike came to me, and said he had a girl living with him, and did not know but what he should have to send her to the Alms-house—he said she behaved so bad, he did not know what to do with her. He came again and said we must take her—said his wife could not stay in the house with her another night—said he had been trying several weeks to get her clean and neat to send her to Boston—I gave consent to have her carried over to the Alms-house, and gave notice to the other Overseers—they went to see Mr. Pike about the child, and were opposed to keeping her—Mr. Pike directed me where to find her mother—and gave me a letter from Mrs. Pike to her, and asked me to carry it—I went to Boston, on a Wednesday, and found her in Myrtle Street—I directed the superintendant to take the girl to Mr. Pike's on Monday, when she was sent to Boston in the stage.

Cross Examined—Mr. Pike said her habits were very bad—dirty—could not keep her clean—that she would foul her bed, the rooms, and his study—that when he asked her why she did so, she would say because she was a bad girl—that Mrs. Pike had made herself sick in trying to take care of her. When I saw Mrs. Howard she said she was sorry Mrs. Pike could not manage the child—she said she was sorry she was obliged to take her home, but would rather have her home than in the Alms-house. Pike's own children used to come out with bare arms when the weather was pretty tough—I saw her start in the Stage inside—the night preceding it froze, but when the Stage came it had thawed.—She was in the Alms-house eight days, I think.

Zacheus Gould, one of the overseers of the poor]—I saw Sarah B. Jay at the alms-house on the 24th of April—she was very sickly and feeble—her feet were wrapped up—it seemed to hurt her to walk—I believe she was taken in on the 15th, and taken out on the 27th—dont know certain—I did not see her till the Tuesday after she came—On Wednesday we went to see Mr Pike at the Academy—our impression was that we had nothing to do with her. We asked why he did not take her to Boston, where she belonged—he said she would be a State pauper there, and he had no right to take her there—he refused to take her out—said he could not be at any further trouble or expense about her—said again that he had no right to carry her to Boston to become a State Pauper, any more than in Topsfield—he said she had got herself reduced by her bad habits and will—he said he was really afraid she would die on his hands. Mr. Pike said she had no other clothing, but what she had on—and said he had taken her destitute and should return her so—that he would speak to Mrs. Pike, and if there were any articles belonging to the girl he would return them. There was considerable feeling among the towns-people about his turning her on to the town, to be allowed only 28 cents a week for keeping—for taking into consideration her alleged habits, it was worth ten times 28 cents. Mr. Pike thought it was none of the people's business to enquire about the alms-house, or who was in it—he did not see that they had any thing to do with it—the people in Boston did not concern themselves about such things. I told him that there was a difference between Boston and Topsfield, which being a small place, the expense were felt more.

At this time, Mr. Pike gave me a more particular account of the girls filthy habits—and said, that he told her if she kept leaving such nastiness about the house he did not know but that he would make her eat it. The very next day, he said he found some in his room, or study. He then told her to take a piece of the excrement and put it into her mouth—that she did so, and kept it in her mouth, and he didn't know but what she would have swallowed it, if he had told her to.—He said she seemed to be destitute of all taste or feeling. That she put it into her mouth without reluctance. I think he said this was about a fortnight before she went to the Alms-House—Mr. Pike said he had a consultation with Dr. Cleaveland, to know what would break her of her bad habits, and they had come to the conclusion, that it might have a good effect to make her eat some *assafœtida*—that he had been given to a boy who was greatly given to lying—he said he gave her some pills of assafœtida—she took them into her mouth—he said he told her she must chew and swallow them, and that she did so as readily as if they were sugar plumbs. When he said he had been trying for four or five weeks to get her decent, I replied—that I did know why, if what he said was true, she was not as decent at one time as another.

Joseph Bachelder—one of the overseers--heard the same description of the child's habits--heard Mr Pike say he threatened to make her eat her own excrement—said that afterwards he did tell her to put it into her mouth, and she did so, and held it there—I dont remember whether he said he told her to spit it out; [the same as to the *assafœtida*.] We tho't it rather a hardship to have to take care of such a girl. We told him, if he did not like the girl, he ought to carry her back. We thought he was telling us these things to make us take the child. He said Mrs Pike was worn out, and that Mrs. Bradstreet, a tenant, complained.

Mrs. Bowditch—used to wash for Mrs. Pike in Hancock street—I heard Mrs. Howard say to Mrs. Pike, that she was to return the child if there was any dissatisfaction on either side—if either on 'em didnt like--that was the bargain. I saw the little girl about Mrs. Pike's—she used to scour knives, and wash potatoes, dishes, and her own clothes—I was told not to wash her clothes, nor the other girl's—she was very dirty--Albert Pike, the son, would box her ears, and the other girl's--they would cry--I told Martha Pike of it—but she would not believe me, and I said no more about it—Albert would sometimes take the cat and throw upon her, which I thought very wrong—she did every thing she was directed to—Martha Pike had the principal charge—the conversation between Mrs Howard and Mrs. Pike, was about a week before going to Topsfield. Mrs. Howard did not seem to wish to have the child bound, till she ascertained how she was to be treated.

Cross Examined—Mrs. Howard said to me, that she thought it was a nice place—I did not say it wasnt—I believe she was there about binding the child once—Mrs. Pike was confined up stairs sick at the time of Albert's throwing the cat on to the little girl. If there was any disagreeing on any side, the child was to be sent home—Mrs. Pike said she should be sent home, if there was.

William E. Kimball—lives in Topsfield—had seen the child at Pike's.

Aaron Averill—saw her at Pike's door, one Monday evening in February—Mr. Legg was with me—she was very nasty and dirty indeed—she came to the door with a

candle—Legg said she looked worse than any Southern slave—her face was very dirty.

William G. Legg—remembered the time Averill referred to—remembers saying she looked worse than any Southern slave—I should think the dress examined yesterday was the same that she had on, when I saw her.

Mr Norris was re-called to explain an immaterial point respecting the letter received from Mrs Pike.

Mrs Howard re-called—I have never stated that Sarah come home without a shirt or stockings—Mrs. Colby gave her a gingham tyer, and a yellow shawl. When she went away she had a change of linen, but came back without.

Joseph Mead---[keeps West India Goods store in Myrtle street]—the child was the most miserable and emaciated object I ever saw—there was no flesh on its bones—running sores on its feet—and finger very sore—after a fortnight, she appeared to be better—saw her three or four times—her head looked as if it had been sore—the hair seemed to have been gouged out—little scabs on the head. Her mother took good care of her.

Cross-ex.—I do not recollect inviting a Miss French to call and see her. People would often come into my store, and ask me about the child, and I would say to them, that they had better go and see her themselves.

Humphrey G. Hubbard—lives in Topsfield—saw Sarah at the pump one of the coldest days last winter—she was at the pump five minutes or more—and had on a short sleeve gown, and head and arms bare—I thought it remarkable, to see so small a child out in that manner—she was trying to pump water ; there was something the matter with the pump, and she could not bring the water.

Cross-examined—I should think it was in January, in the latter part, and about one of the coldest days—At that time I mentioned the circumstance to Mr Perley—I was within a rod of her, but I dont recollect whether I looked over my right or left shoulder, at her.

Abraham Pierce---[the same as Hubbard, as to the pump, in coldest weather]—had a pair of old shoes on, not suitable—with holes in her stockings, or else they were darned with white yarn—I did not perceive that she walked lame ;

once saw her going from the house to the back house, and one of the boys told her to go faster—she said she couldnt. and he pushed her along

Cross-examined—the old shoes were too large for her feet—it made so much impression on my mind, that I remembered it when I got home.

Sally Phillips—lived in Topsfield, near Mr. Pike—at my sister's—In December saw Sarah B. Jay at the pump—had on gingham gown—bare arms and head—her shoes badly worn—her feet were exposed on the ground, which was covered with snow; saw her several times a day. One forenoon, I saw her at the pump six times, in the cold weather; she appeared to do it with great difficulty; I have seen her with two buckets at a time. I spoke of it to a number at the time.

Cross examined—I saw her one time when I was in the street, and at other times through my sister's window. It was in December, that I was in the street and saw her; I turned round and looked at her; I paused; I was not more than a rod from her; she was pumping water; she started from the pump, as I stopped; she went lame some; I know her stockings had holes in them, when I stood looking at them; I saw her naked toes; as she turned from the pump she faced me; her toes passed through the leather; the weather was cold; and some snow on the ground. What made me so particular was, I thought it was too much for her to do. [Several irrelevant questions were put to this witness about her mother's death, &c. but becoming faint, her further cross examination was suspended, and she retired from the court room, and was not again called to the stand.]

Dr. Strong—[of Boston]; called on Sarah B. Jay on Saturday afternoon, after reading the article in the Morning Post; it was the first Saturday in May; I had procured a girl for Mr. Pike, and did not know but this might be the one, and I thought I would see about it; I found her lying in bed; her stomach and bowels were very much deranged, I am satisfied; I could not help being struck with one circumstance which appeared to me to be very remarkable: when I first attempted to examine her, she manifested the greatest symptoms of suffering, but all at once they sub-

sided, and she submitted quietly; I really thought it something very singular; I was unwell, and did not make much examination, the first time; she had some cough; I asked Dr. Jackson to go with me the second time; we were obliged to use percussion; she complained a good deal, but after the first got over it; the mass of the disease was in the abdomen, and I thought the liver was enlarged; stomach and bowels very much disordered; her feet laboring under ulceration from chilblains; the feet had not been frozen; I have seen limbs which had been frozen, and there is a redness, and swelling and extreme tenderness; but in this case there were none of these appearances, but simply chilblains. Upon stripping her, found no marks of bruises. I supposed the child was sick in the ordinary Providence of God; I have never seen a child with chilblains so bad before; they are very painful before they ulcerate; I have known them to lay people up. I thought she had a scrofulous temperament, or habit; In such habits, the local health cannot be restored until the constitutional health is established; there is an appearance of the skin by which we judge of a scrofulous temperament. The feet would have contradicted all my experience, if they had been frost-bitten; I thought the child required an alterative treatment; I saw nothing from which I should infer bad treatment; I think I have seen cases, generally resembling this, where there has been the kindest treatment. There is nothing more irritating to chilblains than urine. I went there with the determination of not hearing what was said; I did not give Mrs. Howard to understand what I thought of the child's state; I answered her inquiries as vaguely as I could; I told her, I think, that the sores on the feet were from chilblains. During the time I was attending her, I was myself taken down with the variolid, and was attended by Dr. Shattuck, and often thought of asking him to attend to the child, but it always slipped my mind, when he was present. I was finally taken down to Rainsford Island.

Dr Shattuck—[of Boston, called by the plaintiff] I had heard, that a child had been abused, and was asked to go and see it, but I refused to go until I recived a letter from Mr Pike, to visit it; I went in consequence of the popular rumours, hot and strong, that were raging like an all-consuming fire over the reputation of the poor Schoolmaster,

Master Pike, as we used to call him twenty years ago. I thought the best refutation of the calumnies that were overwhelming him, would be to set the poor cripple to walk ; and I verily believed that when the little cripple was seen walking about, the rumours so disadvantageous to my friend Mr Pike, would die away like a nine days' wonder. I first examined the feet, which I expected to find in a bad state, and found that they seemed to have been affected with cold, and there was a sore on the little toe ; but there was deep disease in its stomach and bowels, compared with which the sore feet, or the loss of a toe, would be but as a drop in the bucket. There was deep disease in the abdominal viscera, which required the most active and expensive medicines, and the best skill of the physician. Heats and colds are the exciting causes of that disease. There was nothing associated with the appearances, to indicate abuse, at the time I saw the child. I think it was two or three days after Dr. Strong's last visit that I saw her first. She was then labouring under deep disease of a chronic character ; it was evidently a case of deep-toned suffering ; there was great morbid irritability ; her legs were thin---spare ; and she was very much emaciated. I have attended Mr Pike's family, at different times, in Boston ; I cannot say how often, for the instructor of youth and the preacher of the Gospel, I never made a mark against from the first day I commenced the practice of my profession. Alternations of heat and cold are a sufficient cause of chilblains ; I prescribed for her feet *creosate*, so called from the Greek, and signifying *flesh-healer*. I inquired into the disease of her father, and I'm quite sure her mother told me that he died of a scrofulous consumption. I could not judge how long she had been sick.

Cross examined. I usually saw the child in bed. I considered its diseased feet as trifling, compared with its deep seated disease in the abdominal viscera. I considered its life in danger, and as I before observed, she required the best medical advice.

[The close of this day was taken up by a further examination of witnesses respecting Mr Pike's character as as a *schoolmaster*.—See page 9.]

Thursday, Nov. 26.

Witnesses called by the Plaintiff to rebut the Testimony introduced by the Defendants to sustain their charges against Mr Pike.

Mrs Gould—wife of the keeper of the Topsfield alms-house—Sometime last year, Mr Pike brought Sarah B. Jay to the alms-house—Mrs Pike and a little boy came with them—was comfortably clad—had a factory gingham gown, short sleeves, white woollen stockings—a woollen skirt, a warm one—shoes good, but run down to heel—and a good shawl.—She looked pale, and was not fleshy—the child was pleased—we have feather beds, coffee in the morning, maet at dinner, milk at tea. The girl was lively and low alternately—would be playing with the children, and all at once, would be down sick—she often wanted to sing. I've seen sorer feet before.

Cross-examined.—I furnished her shoes that kept up at the heel—I furnished her a change of linen—Mr Pike left no clothing for her—the nail part of her little toe was gone—the others were sore. When she left the alms-house, I put on her old shoes. I never washed her feet, but I furnished her with warm soap-suds to wash them with herself—I took off the cloths, and put them on again for her—I would sometimes stand by and see her wash them in the warm suds, but put nothing else on them—no ointment. At times she appeared as well as the other children, then she would say she was sick, and complain of her stomach, and I would give her molasses and water. She said she was sick, but I think she made it, because if she had been sick she could not have eaten as she did, and played. At first I thought she was sick, and gave her the molasses and water, but afterwards I did not give her any. I did nothing for her in consequence of her complaining of being sick. She would, after playing in the kitchen, come to me, and ask to sit in my room, because she said the children made too much noise in the kitchen. I did not allow her to sit in my room when she asked to. Once or twice she sat there, when she did a little sewing for me, but not at any other time. She would play for hours, and then in a few minutes would be asleep—she had rags on her feet when she came, and I put on other ones. She wet them two or three times, and dirtied her clothes once. There were lousy people in

the alms-house—I combed her head, when she first came, but found no lice upon her.

Thomas Gould—[keeper of the alms-house.] She had a cloak, when Mr Pike brought her, which he carried back —Mr Pike said she had conducted in such a way as to spoil most of her other clothes, but I might have what was left by sending for them. She looked pale and thin, sore feet, &c.—She would eat hearty when there was *meat*, but did not seem to eat the bread and milk so well. We did not consider that she was sick ; was lively and would play and sing some. When she went away, her feet were getting better—I did not think she required a physician—If I had thought so, I should have sent for one. She defiled herself a few times, but not much after I spoke to her.—She wet the floor once, and laid it to a small boy. The day of her departure from the alms house was pleasant—I believe she was there eight or nine days—I left her at Mr Pike's, for the stage to take her.

Cross-ex.—The pumps she had on were not suitable for well feet, but were better for her sore feet than another pair—they were flat down at the heel, as if worn down —we put on a stouter pair, that we could get on to her heel —when she went off, we stuck her feet into the pair furnished by Pike, and carried her off in that state. Both the children and the old folks in the alms-house had lice in their heads. She complained of her stomach—I dont recollect that any prescription was made for her—the child was pretty thin, much thinner than the other children. I put a shawl around her, and took her over to Mr Pike's, in an open wagon, and brought the shawl back. I never went to Pike for the clothes, nor he never sent any. I never saw that she had any bodily disease about her—at times she would allter her voice, and talk in a whining tone of voice.

Jacob Tenney—[stage-driver]—I carried the girl to Boston from Mr Pike's—I think it was a warm pleasant day ; I told Mrs Pike, I thought it was not necessary to put a cloak on her when she asked me—that her shawl would be enough as it was warm pleasant day—she did not complain, but looked pale and sickly—she was bright and lively on the road—and I heard her singing—there were other passengers in. and at Lynn I told her to keep still. When we got to Boston, I did not mind that she had any difficulty in walking.

Cross-examined.—I recollect it was muddy—the sun shone—I have no recollection that any request was made to have any one look after her—I think I did not drive up to the door with the child, but stopped at the corner, and set her down on the sidewalk—two women, I think, were coming out of the house in Myrtle street, to receive her, when I left her.

Dr Stone—I saw the child the day she went to the almshouse, accidentally, as she was leaving Mr Pike's house—I made no examination regarding her health; but seeing that she was pale and much emaciated, I looked at her tongue—it was perfectly clean, and I perceived no indications of disease about it.

Cross-examined.—I was not sent for to see the child—I happened into Mr Pike's accidentally.

Miss Hannah French—[teacher of a female school in Boston]—I live in the next street to the child's mother—saw the child soon after she returned—I had a particular request, through my father, from Mr Mead, to see the child—I expected to find her in the last stage of consumption, but I found that she was not worse than many children, who have had the best of treatment. The mother declined removing the bandages, because it would give her child so much pain, but she showed me a part of the toe, and gave me to understand that all the rest were as bad as that. The mother said the feet were frozen; I went there again afterwards in company with Dr Strong. I saw the feet then, and I was very much surprised that they were so well as they appeared to be—I was convinced they were chilblains, and said so to Dr Strong—I had been led to expect the whole feet as bad as the toe. I was very much astonished at discovering the artifice and cunning of the child in affecting weakness—I would sometimes find her sitting up, lively and eating, and when she observed me, would assume the airs of languor [here Miss French gave an imitation of the child's supposed languid affectations.] I would go in three or four times a day and discover those marks of affectation. Three or four weeks after she came to Boston, I saw her playing in the street, and I said to her, "you are not so sick then, little girl, as you were," but she made me no answer, and ran into the house. The mother told me, that unless the passengers had put some

things on her she must have suffered. The mother said the child was comfortably clad, when she went to Mr Pike, but she came back very thinly clad, and said Mrs Pike had kept back a black silk gown she had when she went away. I had all the excited feelings of the neighborhood against Mr Pike, when I went to the house to see the child first. I have charge of a female school.

Cross Examined —I live about the 16th part of a mile from Mrs. Howard.—When I went there first, I found the mother, and her children and an interfering old woman, who answered the questions for the child, and remarked about the case—the little girl was sitting in a chair—when I visited her I usually found her eating—either an orange, or cake, or pie—I did not examine her arms, or body to see if she was emaciated—I saw the side of her foot—it was not in so high a state of inflammation as I have seen—I have had chilblains as bad myself—the ulcer extended from the side of the foot to the toe—I did not notice that a joint of her toe was gone. Her feet were not in so bad a state, to look at, as her eyes now are in, from the abuse of her mother, I suppose. The child looked pale and languid. On my first visit my sympathy was much excited—I thought she had been abused—I visited her the next day, once or twice. Perhaps on the fourth or fifth day, I discovered the imposition of the child—I was disgusted with the deceit practised. Mr. Mead showed me a piece in the paper, and said there ought to be something about Mr. Pike right under it—I told him to be careful—Says I to him, "Mr. Mead, be careful; be careful what you are about; this affair will be investigated—you dont know the truth of this matter yet, perhaps." I thought the child out of health, but not alarmingly sick—there was great excitement among the neighbors, and the mother and the talking old woman used every means to increase the excitement. People were expected to make themselves welcome—I carried something—I cant say now what it was—I do not charge my memory with such things.

Saltonstall.—While you were thus obeying the christian injunction, of not letting your right hand know what your left was doing, did you think the child was an imposter?

[The witness does not answer, but stands mute.]

Saltonstall.—Did you discover that she was an impostor before or after you carried that "something?"

Miss French.—I gradually discovered that she was deceitful. I stated to my own family my opinion, but did not disclose it at the child's house, or to her mother. I continued to visit there often.

Saltonstall.—If you believed her to be an impostor, what was your motive for continuing your visits?

Miss French.—I possess a persevering disposition, and when I undertake any thing I like to go through with it, and I was determined to find out if she was an impostor.

Saltonstall.—Then you went for the *amiable* motive of detecting her, did you?

[The witness returns no answer.]

Saltonstall—Can you recollect how many times you went for that *amiable* purpose—was it three, four, five, or six times?

Choate.—Your honor, I declare I *must* interfere for the protection of that lady.

Saltonstall.—And I must have an answer—I expect the lady knows for what purpose she is called upon that stand.

Miss French.—I expect I have got to tell the truth.

Saltonstall.—Well, how long did you continue to go there?

Miss French.—For three or four weeks.

Saltonstall—When did you tell Mr. Mead this matter was to be investigated?

Miss French.—I gave the caution to Mr. Mead the day the piece came out in the paper—it was before Dr. Strong visited the child—Dr. Strong went that afternoon.

Mrs. Cushing—saw the child on the 2d of May—was surprised to see her so well, after what I had heard—I thought her health feeble, but she had an appetite; I saw her twice; the second time she was eating some gruel, with a cracker in it. The mother said she wore home but two articles of dress, and that the driver or passengers in the stage offered her clothes. I said to the mother, "*providentially* it was a warm day." She said the child had a silk dress and one or two silk dress aprons from Mrs. Colby, which she had not brought back. I saw the child very soon in the street, considering what they said of her illness, and I told the child so. I said to her, I was surprised to see her out so soon.

Cross Examined.—I thought the child was very feeble,

but she appeared to have a good appetite. The mother stripped up her night dress sleeve, and she appeared emaciated. The mother said she had no petticoat on, when she came back.

Mrs. Martha Williams.—[Mrs. Pike's mother;] I was taken suddenly unwell last Saturday; I recollect when *Benizette* [Sarah B. Jay's middle name] came; I was below almost every day; Mrs. Pike was not sick for three or four days before we left Boston; Sarah's work was to help wash dishes, sweep up kitchen, scour knives, &c. Ever since I resided in the family, I have had the entire care of mending the stockings, Sarah's among the rest, up to the time she left, and I have remarked that the toes of them were generally better than most of the others; she had three woollen pairs; I saw the girl every day almost; never saw her out doors with her toes out, or in the house; never noticed her shoes particularly; they were thick; after her feet became sore, she complained her shoes were too small, and she then wore one shoe, and one India rubber; I have often heard Mrs. Pike forbid her to go out for water; it was a standing rule that she should not go for water; her feet were then sore; never saw her go for water; the other girl went for the water; never saw more then one pail used for bringing water; *Benizette* was as well dressed as the other girl; had a comfortable woollen skirt; three calico gowns, beside a gingham one; had a silk dress made up in Boston; I have heard Mrs. Pike speak to Benizette about her dresses, which were not made up; they were basted together; Mrs. Pike used to tell Benizette she should have them if she behaved well.

Benizette slept in the middle chamber of the 3d story, with the other Sarah; Benizette and Sarah slept together a number of weeks; one morning I found Sarah sleeping outside the clothes, because there was both wet and filth in the bed. Then the straw bed was taken out, and made up by the side of the other one; it was doubled; she had two sheets, a blanket, and a woollen quilt twice doubled; and there was a quantity of bed clothes in the chamber besides. I have heard Mrs. Pike repeatedly ask Sarah to see that Benizette was tucked up comfortably; this was after Benizette kept herself continually in a bad state; both of wet and filth; those habits continued as long as she staid there. Mr.

and Mrs. Pike talked to her and tried to persuade her; Mr. Pike whipped her with a small rod; seen him shake, her and box her ears; she left her filth in the chambers, in Mr. Pike's study and in the stairs; she come down one morning with her hair, cheeks, eye, and edge of mouth covered with it. As soon as she was cleaned, in an hour or two she would be wet and filthy again; her feet had bandages part of the time; her food was the same generally as the rest of the family; she was not required to work, they only wanted her to behave decently.

Cross examined.—I have seen her go for water, and have heard her called back; she was active in doing more than was required of her; to be sure she did a great deal more than was wanted of her; It was six and might have been ten weeks, when she fell into those disgusting habits. She was often sent to her chamber and told to stay there, because she was not fit to be seen; perhaps an hour at a time; not to my knowledge, a day or a day and a half a time; I cant say but what I heard Mr. Pike say he had sent her down into the cellar for exercise; perhaps two or three weeks before she went to the poor house; dont know how long Mr. Pike kept her there; she never went to meeting nor Sunday school; she appeared to have her health, but was pale and emaciated; I dont know that any one had the care of her before she left; when questioned she would say she didn't want to be a good girl; I saw Mr. Pike administer the assafœtida; he gave her a little piece; told her to chaw it up; said it would do her good; I did not see that she made much objection; heard it was not a great while before she went to the Alms-House; I dont recollect ever hearing Mr. Pike threaten to put a hot fire shovel to her body; I dont remember that she ever hid herself in my closet; she often staid in my chamber.

Sarah Knowlton—lives in Mr. Pike's family; I heard Benizette's mother tell Mrs. Pike, that she had a bad temper, and she wished her to conquer it [the witness confirmed in every particular the testimony of the preceding witness respecting her clothes and said] I had out-grown my silk gown and it was made up for her in Boston; Mrs. Pike furnished her with a calico and gingham gown, but would not have them made up, because she was so dirty; little Joseph was clothed no better; his skirt was not so thick and warm as

hers. They bought her a pair of calfskin shoes, and she wore them till her feet got so bad, that she could not wear them any longer; she then wore an old pair, but there was no holes in them; she was not allowed to go for water at all after her feet got so bad; she never took two pails, because we had but one which we used to bring water. Her feet were washed in warm water and rum; I used to attend to her feet; put on cold cream once; she kept her feet wet most all the time; her food was the same as the rest of the family; except when she had been taking salts, when Mrs. Pike made gruel for her.

She used to leave her filth in every part of the house, and in Mr Pike's study—sometimes she would say she did it because she was a bad girl—sometimes she would say she did not want to go out because she was ugly—sometimes I would go out with her, and stay a good while, and she would not do any thing, and as soon as she got back to the house would dirt herself—On the morning she went away to the alms-house, the same thing happened, while I was dressing her by the fire in the kitchen.

Sometimes Mrs. Pike would not let her have any cake, or pie, or any dainties, and would say she should not have them until she behaved better, and was clean. [The witness stated, that the child would tear up her linen, and the sheets from her bed, and from the witness' bed, and roll up her filth in the pieces, and throw them into the cockloft, behind the boys trunks, in their chambers, and between the sacking and tick of the witness' bed. On the point of the child's habits, the testimony of Mrs. Williams, Miss Pike, and the witness corresponded in every particular. They all stated that there was no fire kept in the chamber in which the child and the witness slept.]

Cross examined.—Nothing of her foul habits in Boston; not till eight weeks after we got to Topsfield; Mr. Pike would slap her ears; once he sent her into the cellar for exercise, he said; Mrs. Pike would order her into her own chamber to keep out of the way till the boys went to school; she did not go to meeting, nor Sunday school; nor I till after she left; once she complained of being sick in her stomach and said she had the head ache; she was kept in her chamber all day, and Mrs. Pike gave her an emetic; no physician was ever sent for; her appetite very great, and in-

creased; although she continued to increase in eating she lost flesh; when Samuel was sick he was as pale and thin as she was; he had the doctor; her bed was not moved or changed after the first three or four days; the sheets used to be dried, and the sun used to shine on her bed as it lay. She had seven thicknesses on her bed for covering. She was only deprived of meat when taking medicine; I remember one night when she escaped from the cellar, and hid herself away in a closet in Mrs. Williams' chamber; we missed her at supper; there was a great uproar and excitement; it was after nine when she was discovered; one of the boys heard her breathing in the closet; it was a very small one, and she had got under a shelf, and was not seen the first time the closet was opened; I do not remember that Mr. Pike sent for some rum to pour unto her sores after we found her; I dont remember that he ever threaten her with a hot shovel; Mr. Pike did nothing but talk to her, when she came out; Mrs. Pike gave her salts because she was very humory indeed. She was deprived of pie or cake sometimes, after she had behaved ill, which was not till as much as eight weeks. It was not very frequently that she had to live on water gruel.

Miss Martha Pike—[daughter of the Plaintiff]—mother was not sick just before she left Boston; it was about four or five weeks; Mrs. Howard came just after; I heard her say that Sarah [called Benizette by Mr. Williams, and the other Sarah] had a bad temper; or an ugly temper; I remember particularly, that once her mother asked my mother, if she had seen any thing of her bad temper, and mother said no: her mother said she always had sore feet in the winter, and said she was laid up three weeks, the winter before; when we left her father bought her a box of ointment for her feet. The shoes she wore away were dancing pumps that belonged to one of the boys; he only wore them two or three times; we sent out to get a pair to suit her on account of her sore heels, but could not find any; the pumps were put down at the heel on account of her sores; she had a pair of India rubbers too, for the same reason; she always liked to pump, though not allowed to after her feet were sore; she ate the same kind of food as the rest, only more. I have often heard mother give Sarah directions to cover up Benizette, because she used to go to bed early.

[The witness gave the same account of the child's personal habits as the other witnesses; she also confirmed them in every particular respecting the child's clothes and bed covering.]

Cross Examined—Her feet were quite sore a number of weeks; were better when she went away than before; she appeared to be very well when she came; not very well when she went away; would complain in the morning of headache, and then eat a hearty breakfast; we did not think she needed a physician. I have seen father whip her with a stick; once two mornings running; this was two or three weeks before she left. I remember when she was found in the closet; she was always sent up stairs, except when the boys were in school; when they went to school she was called down, and sent up again at the intermissions, so that the boys should not see her. It was at the end of January, or the beginning of February. The morning Benizette came to our house from the Alms-house, to go to Boston, I did up her clothes in a bundle; My mother knew of it; my father was in school; I did them up while Benizette was there; I laid them by her side in the kitchen, while she was waiting for the stage. She went without them; they were entirely forgotten till after the stage had gone; there were three calico dresses, one skirt, two pair of stockings, pantalettes, several aprons and linens.

Sarah Knowlton re-called—I saw the bundle of clothes in the kitchen; they were done up in brown paper, and tied with twine.

Joseph Ware—Boarded at Mr. Pike's last January; Sarah Benizette had the same food as the rest of the family; she used to eat in the kitchen with the other girl; Mrs Pike would tell her if she had not enough to come up and she would give her some more.

Dr. Cleaveland, of Topsfield—I don't know that I ever saw this girl; Mr. Pike told me about her habits; assafœtida is perfectly harmless; I think I told him I had known it to be given with good effect. I should think her habits would affect her health, as cleanliness is essential to health.

Cross examined—I signed the certificate; I never called as a physician to see child; Mr Pike called more than once about her; I had advised him to send her home.

Dr Stone, re-called—Her habits must have affected her health, and would naturally produce *marasmus* ; that is, much emaciation.

Mrs Howard, re-called—I frequently told my neighbours, that Mrs Pike was good to me and my child in making presents of little articles of dress. My husband told me he had seen Sarah in a black silk gown, and I supposed she received it from Mrs Colby ; I never told Mrs Cushing that the child wore home no skirt ; I dont know that I mentioned the skirt to her. My child got her sore eyes at school. [See an observation in Miss French's testimony, page 32.] They were so sore that she could not go to school, and when I went to the school to mention it, the lady that kept the school told me that the eyes of a great many of her scholars were sore, and affected in the same way, but generally not so badly ; I think she said more than half of them had sore eyes. At first I used to urge people to see my child's feet, and would show them, till Dr. Shattuck advised me not to do so. I dont remember telling Dr. Shattuck that my husband died of a scrofolous consumption—I have said he went away insane, and that I did not know that he was dead only from what I had read in a newspaper.

Friday, November 27.

Mr. Saltonstall this morning entered upon the closing argument for the defendants, by observing, that it was a subject of congratulation, to all parties, the court, the counsel, and the jury, that the termination of their labours approached, though he was not aware that the case had taken up more time than was necessary, considering its great importance. Mr. S. then proceeded to comment on the evidence in a most impressive and convincing manner ; he admitted, that Mr. Pike, the plaintiff, a public teacher, stood well in the community until this difficulty but that it was his misfortune, by his own conduct, to have exposed himself to severe remark. He would contend that the charges against him were true, and that the defendants' pleas in justification had been substantially made out. Malice was essential to the maintenance of this action, and the jury would inquire into the motives and intention of the defendants in visiting the scene of excitement in Myrtle street ; and if the jury should find

that the proof did not come up to the strict letter of the libel, they would only find such malice as the law itself presumes, and would only give the very smallest amount of damages. The jury would perceive by reading the article, that the writer claims its publication for the sake of humanity. Mr. S. reminded the jury, that the child behaved well till after she had been at Topsfield 7 or 8 weeks, when she unaccountably obtained a most extraordinary victory over Mr. Pike and all his family—according to the testimony of the members of the family—she obtained this victory over one, whose business for 20 years has been to control and govern, and suddenly sunk into the lowest degree of loathsomeness—whether from physical disease, mental aberration, or imbecility, or stern sullenness, the jury would determine from the evidence. She was then put into the alms-house, and was not sent from there by any agency of the plaintiff. It was also proved, that all the time the child was at the plaintiffs, she was never sent to church or sabbath school, and thus her mind and heart were deprived of their proper aliment; and to deprive a child of her tender and peculiar age of all advantages for the formation of character was as great cruelty, as to furnish her with indifferent food. The jury, he hoped, would bear in mind, that the child was not eight years of age when these acts of neglect commenced. Mr. Saltonstall considered that the question of the credibility of Mrs. Howard, the child's mother, lay at the foundation of the case, and would descend to that point with great alacrity. I call upon you, said he to the jury, to say if she be not an unimpeached and unimpeachable witness; and if she had been impeachable, with what pleasure would not Miss French have attempted it to aid Mr. Pike. He referred to the testimony of Mrs. Colby, that the child was honest, cleanly, and amiable, but lively and prattling—how conspicuous, too, had been the frankness of the mother. All the witnesses declared that she was healthy when she went to Mr. Pike's, and the change in her habits was a prodigy that could not be explained by any supposition, but a neglect on the part of Mr. Pike or his family. Unless she had been bound, it would have been his duty by law, to have returned her to her parent, without any contract to that effect. But there was an express contract, that if the child was sick, or either party were disatisfied, she was to be sent

home. Even had she been all they describe her, it would have been his duty to have taken her home, in a chaise, a wagon—aye, a scavenger's cart, surrounded with guards or police officers. But long before there is any complaint of her habits, she was seen by many witnesses drawing water at the pump and in the yard exposed, and dirty—they all paint the child as a poor neglected thing, worse than a Southern slave, and then when, by the testimony of the physicians, she was suffering from deep disease, in her stomach and bowels, he tipped her over into the alms-house for fear she would die upon his hands. This matter of the alms-house, was the very *gist*—the very marrow—the head and front of this charge against him. He did not even notify her mother till the overseers compelled him by their refusal to keep the hapless being in the alms-house. It was cruelty to put her in the alms-house, even if her conduct was as bad as stated; she was but a child—a young child—and it was his duty to have guarded against its habits—it should have been treated as a fatal malady; and if he found he could not check her, he ought to have sent her home. It was a point worthy of notice, that neither before nor since that time, when under other hands, nothing of the kind occurred, and even in the alms-house, where at least she had a comfortable bed, improvement became visible. At Pike's, sick though she was, for punishment, she was deprived of her meals, of meat, of pie, or cake—cuffed, slapped and beaten with a rod,—and confined eighteen hours in her chamber, without fire; for it is in evidence, that she was kept there all the time the boys were not in school. They say she looked as pale as Samuel, when he was sick and had the doctor; and Mr. Pike ought to have called in a physician to see her, and ascertain if any physical difficulty existed. The child must have suffered the greatest agony, before she was sent to the alms-house, said Mr. S, with the chilblains. What must she have suffered from an ulcer that actually destroyed a joint of a toe! We all know that mere chapped hands will sometimes keep grown people awake all night; and if this child had been Mr. Pike's own, it would have been laid on the bed, with a fire in the room, and nursed and attended. Did she come home properly clothed? Was she not deeply diseased? The whole evidence proves it. It is true, that Miss Hannah French, contrary to all the Doctors, by her superior

shrewdness, discovers that the child and its mother are only playing a part—by her deep penetration she detects what no one else suspects. Judge, gentlemen, if her opinion does not originate in a desire to appear wiser and more knowing than any body else. You saw her manner on the stand, and I have no doubt you marked her testimony. Her conduct and openly avowed motives should of themselves affect her credibility. If further evidence of her feelings be wanting, let us recollect her gratuitous insinuation, that the child's sore eyes which we have witnessed here, were produced by the abuse of her mother.

When at the suggestion of Miss French, Dr. Strong goes there, does not the mother at once consent to an examination. He tells us of no disguise.

What does Dr. Shattuck say, when he tells you he went there at Mr. Pike's request, and found so much disorder in the very seat of life, that he paid no attention to her feet. He comes on to the stand as the avowed friend of Mr Pike, and if he had not avowed it, you must have perceived it, but he came on to the stand, too, to speak the truth, the honest truth, unreservedly. No. Dr. Shattuck, who, under Providence, was the means of saving the child, suspected no sham ; and he even administered to her such active and energetic medicines as the urgency of the case demanded, and which, from their powerful character, must have destroyed her life if she had been a well child, instead of being reduced to the last stage of debility; and when the question is directly put to Dr. Jackson, he replies "that she was altogether too sick to play a part." Mr. S. reviewed at length the medical testimony, and put it to the jury, whether, in the very language of the libel, the child was not "reduced to the lowest state of wretchedness." Passing somewhat cursorily over the other parts of the evidence, he adverted to the charge of "brutal cruelty," again.—He contended that the charge was true to the letter : In the first place, taking no account of other punishments, is it not proved, and not attempted to be denied, that he compelled the child to take *assafœtida,* the most nauseous of all substances except *one*, which he afterwards administered, and as he says, without her wincing. What does this fact, so disgusting, so revolting, prove, but her entire submissiveness—that she had no power, no hope of resistance ; yes, her taking it

only proves how entirely she was broken down, in body and mind, by a long course of cold and blighting neglect This fact alone, said Mr. Saltonstall, would justify the whole libel. It is impossible to foresee what may be said on the other side; they may tell you of his good character, his unblemished reputation, his standing in society, and the feelings of his family; but I would ask, what damages are due to the *feelings* of a man who could make a child eat her own excrement? But, gentlemen, before you think of giving damages, you will look into the heart of the defendant for his motive. What motive could he have had but of humanity—of duty—to do as he has done? Was it not one of the cases in which the press should have spoken in a voice of thunder?

Mr. Saltonstall's argument occupied about two hours, and profoundly engaged the attention, of the Court, the jury, and a deeply interested audience during the whole period of its delivery As soon as he closed, he was immediately followed by

Mr. Choate, who commenced his closing argument for the plaintiff, by observing to the jury—"all your verdicts, gentlemen, during the present term—all the cases you have tried and all the justice you have dispensed, are of no importance compared with the justice which now remains to be done to this deeply injured man, who has been so remorselessly assailed through the columns of one of the keenest and most widely circulated journals in the country; and the same foul charges, and false, have been re-written on the Records of this Court, by the pleas, seven times over, and will there outlive even the Morning Post. To the plaintiff it was a case of life and death. Mr. Choate was willing to admit that the plaintiff had made two or three mistakes, but the evidence entirely failed to make out a single act of cruelty. Yet cruelty—"brutal cruelty"—is the general charge; and to say that these mistakes, which no man more than the plaintiff himself regrets, amount to such cruelty, is a deadly and ferocious libel, and wherever it is read and believed, my client's occupation is gone; for a parent, who shall believe him guilty of the acts charged, would sooner send his son into the forecastle of a Portuguese *slaver*, than entrust him with Mr. Pike; or he would strive to rescue a daughter from his grasp,as desperately as he would struggle to rescue her from an Indian captivity. He is charged

with keeping the child for five long months on Indian meal—if true, his conduct is low, blackguard, lousy, and beggarly; but there is not a line of evidence, that she was not well fed. It is said she was compelled to sleep on a straw bed, without covering, till her hands and feet were frozen: What becomes of the man of whom this is believed in the County of Essex? Mr. Choate contended that the article was false to the letter, and false in spirit; because it gave no intimation to the reader that the girl was a prodigy in character. This omission was of itself a great falsehood. Not a reader of the paper could ever have imagined the unheard of situation of Mr. Pike and his family. It is said she slept on straw: why not tell the reason why it was necessary for her to sleep there? Mr. Choate dwelt at length upon this point, and contrasted the evidence for the plaintiff and the defendants respecting the treatment of the child during the early part of her residence in Mr. Pike's family. He observed, that he believed that all the witnesses, except Sarah Phillips and the washerwoman, intended to tell the truth, though they might labor under some natural bias; but those two were the only witnesses who had sworn to falsehood designedly. I thought, said he, that she fainted soon after saying she saw the child's toes out, and not after the question respecting her unfortunate mother's death. Mr. Choate abandoned entirely the ground, that the child had been playing a part, and did not attempt to explain, or even once advert to the testimony of Miss French on that topic, although in an earlier stage of the trial, he gave notice that he should argue the cause to the jury on that ground. With respect to sending the child to the alms-house, and not home to its mother, he admitted that the plaintiff could not sustain himself in an action on the contract, yet knowing as he did, the extreme poverty of Mrs. Howard, and that she was about to be confined, he might see in that circumstance a powerful and humane motive for putting her into the alms-house, rather than sending her home. He must have remembered Mrs. Howard's declarations, that her husband never expected to have to maintain this child; that she was not at home when she married him, and that she was for this reason, and her bad temper, for that was the character she received from her mother—and think what a child she must have been to have wrung such a character from a fond

mother's heart—such a mother too, as we have seen her to be—and for this reason, she was the cause of great domestic difficulty. To keep her in his own house longer, was impossible; and he thought that a husband, poor as Mr. Howard is allowed to be, and rendered fretful by a new charge of his own, might be still farther exasperated by an additional burthen that had already rendered herself disagreeable to him. I admit, gentlemen, that the contract to send her home was binding on Mr. Pike; but I do verily believe that he was actuated by the purest motives that ever prompted man, in not sending her there. Mr Choate considered that the medical testimony in the case negatived the inference that her condition was the result of any harsh treatment she had received—not one of the doctors, said he, could infer from the mere appearances only, that it was a case of neglect and cruelty. It was proved that she had a scrofulous temperament, and that fact was sufficient to p.oduce the emaciated condition to which she was reduced. Every thing about the case was infelicitous and calamitous in the extreme. Mr. Pike and his family thought she was stubborn, sullen, and not ill, from the circumstance of her great appetite; for it was in evidence that when Mrs. Pike thought she was sick she medicated her. In this point of view, two other certainly unpleasant facts in the case, which have been made to assume great importance in the pleas and arguments, admit of some excuse, if not entire justification. He alluded to the substances Mr. Pike made her put in her mouth. The assafœtida was undoubtedly administered as a disciplinary measure—to effect a moral reform—to conquer the will—for they did not attribute her conduct to disease, which it is now useless to deny probably existed. With regard to the other matter, the jury would hesitate before they wonld convict the plaintiff of the whole libel, for that one ill-advised act The jury would look at the plaintiff's situation—tried in a way no mortal man was ever tried before—they would remember his threat to do it, and her continued contumacy, as he supposed—and, under such circumstance, see some considerations to mitigate the act. They surely will not drive him out of the world—outlaw him—for one injudicious act; for that must be the effect of a verdict which says the charges in the libel are true.

Believing, the defendants had entirely failed in their justification, and that the plaintiff's case was established beyond a doubt, Mr. Choate adverted to the damages, which he had a right to expect ; and it was fortunate, he said, that the defendants could pay even the entire sum claimed.* To estimate the extent of injury sustained by Mr. Pike, it must be recollected, that the Post was a leading political paper, at the head of its class, and circulated all over the country ; that on account of its wit and the general ability with which it was conducted, it was sought after and read by many who did not subscribe to its political doctrines ; and that in its matters of general intelligence, and in its criticisms, it was considered as speaking upon its honor and authoritatively, and was therefore fully credited, aside from its political views. It should be recollected, that in this instance, they had stepped aside from their main business as political partizans, to attack the plaintiff, a private citizen, and exercising a private calling. He would have the press pour forth its blasts as free as the mountain storm on political men ; but there he would have its licentiousness stop. He would not in the present case go for express malice, but for gross carelessness in the use of a great instrument—a precipitate movement on the part of the defendants that was death to the plaintiff.

[Mr. Choate's argument occupied about five hours in the delivery, and was distinguished throughout by great ingenuity, and presented every fact in the case favorable to the plaintiff in the strongest possible light. His principal object was to satisfy the jury that the circumstances proved by the defendants, in justification, did not meet the issue presented in the libel, and the plaintiff therefore stood upon the law, which protected him as much as it did any other citizen, notwithstanding the facts

* On Tuesday, Mr. *James L. Homer*, summoned by the plaintiff, to give evidence respecting the property of the defendants, testified, that Mr. Beals had formerly been his partner, in publishing the Boston Commercial Gazette, and he was of opinion, that Mr. Beals was worth from ten to fifteen thousand dollars. Mr. Homer said he did not know anything about Mr. Greene's property, but he lived like a gentleman. Mr. Homer also said that "that every printer in Boston had a right to live in good style."

that had been proved against him. He came to court, he said, to try the truth or falsehood of the charges contained in the libel, and nothing else.]

Saturday, November 28.

His Honor, Judge Putnam, after settling some points of law, which had been referred to by Messrs. Choate and Saltonstall upon the opening of the Court, remarked generally, that the whole evidence was open to the jury, with respect to the damages, even if the defendants did not fully make out their pleas in justification. His Honor then proceeded to charge the jury substantially to the following effect: It is, he said, one of the most interesting causes that has been brought in the county for many years, and has been presented to you, gentlemen, very ably by the counsel on both sides; and it is now our duty to endeavor to do justice to the parties—to render them the same justice we ourselves should expect if similarly situated. You have been told that the defendants have stepped aside from their ordinary business to publish a grave, but false charge against the plaintiff, Mr. Pike, and that the result must be ruinous to his reputation, and he therefore comes into this Court to obtain the only redress that can be had. On the other hand, the defendants say it was their duty to publish the truth, for the cause of humanity, and that they only have endeavored to do so, and in fact have only done so. Gentlemen, the charge is that the defendants have published a libel, imputing criminal, or at least unworthy conduct to the plaintiff for which he ought to recover damages; and the defendants come into court and say the plaintiff ought not to recover, because he did certain acts set forth in the pleas of justification. Now, if you find that the reasons set forth in the pleas are not proved, then the verdict must be for the plaintiff; but before you come to the question of damages, you must say the defendants are guilty of this libel. Then the question is, how much damages—should you ever arrive at the conclusion to give any damages at all—how much damages ought to be given, upon the whole matter in evidence. The question of damages must be upon the whole matter—you must take the evidence on the justification altogether. You must go into the question of the malice—whether slight or gross; and ascertain what will compensate, in justice and reason, the legal wrong committed. You have nothing to do with the feelings of either party—however sore either may feel, it is nothing to the jury. "Brutal cruelty," is the charge—the nature and meaning of the charge is *extreme cruelty*, to meet which it is not necessary, for instance, for the defendants to prove that the plaintiff kicked the little girl down stairs, or did any other violent act, for great neglect may amount to great cruelty, which we all know, may be practiced in various ways.

His Honor said he considered the two great questions in the case to be, What was the condition of the child when it came into the hands of Mr. Pike, and when she came out? You ought to settle in your minds, the terms upon which she came into his hands, and what the conduct of the family to the child was, and whether that conduct were agreeably to those terms? How she was when she came, how she was when she left, are the two great points, which I shall notice, and I shall leave you, gentlemen, to fill up, from the evidence, the intermediate condition of the child, yourselves. The application for a child was made by Miss Pike, for her mother, to Mrs. Colby, who referred her to Mrs. Howard, the mother of this child, whose husband was poor, and did not feel able to support it. The child had been living with Mrs. Colby, who gave her work to do, and she did it neatly, and was particular not to soil her clothes—she was clean when she went to Mrs. Colby's, and her mother made her so. The character of the child's mother is material in this case, and her conduct very remarkable, if she was playing a part, for she voluntarily says to Mrs. Colby—"I will not deceive you—she is a very bad child—her word is not always to be taken." In consequence of this declaration by the mother, Mrs. Colby tempts the child's honesty, and I should think, rather severely; and it seems to me to an extent somewhat doubtful; for we are taught to pray—"Lead us not into temptation." I should doubt very much the expediency of tempting so young a child so, but yet we see that she took nothing. Mrs. Colby described the child to Mrs. Pike as requiring gentle treatment. Mrs. Colby says she herself did pretty much all the talking, but the mother said, that if her child became sick, or there was any dissatisfaction, she wished her sent home. Mrs. Davis testifies to the same point. The child was to be brought up the same as Mr. Pike's own children, and so as to be able to get its own living. There can be no doubt as to the terms upon which the child was received. As to her health at that time, she was not a robust, but what might be considered a healthy child, but had been afflicted with chilblains; but was well then. Well, then, what was her condition when she was returned? Let us not look at the facts as they are presented and mixed up with the eloquence and arguments of counsel, but let us sink down to the naked facts. What was her condition when she returned? You heard what Mrs. Colby said—a fortnight after she returned, Mrs Colby hardly thought she could live. Mrs. Howard tells you that she was so thin, the hip bone had wore through the skin, and produced a little sore—that she was very costive, but had a great appetite. Dr. Flint says—"I have no means for deciding whether the feet had been affected by frost or chilblains," and that one joint of the little toe was gone. Dr. Jackson thought that she was laboring under an organic disease, and was too

sick to be playing a part. In this matter, the opinions of physicians ought to have vast weight, passing over the opinions of individuals who have spoken of her condition. I call your attention particularly to Dr. *Shattuck*, who was called by the plaintiff. I think it a matter of no consequence who called him—whether plaintiff or defendant—every body can see that he is disposed to give you the truth. He thought Mr. Pike had been abused, and he went to see the child. He found her deeply sick, he says. There was deep disease requiring active remedies, and expensive ones. He did not regard the loss of the toe as a drop in the bucket compared with the internal disease. She had an irritable stomach—deep chronic disease in the abdominal viscera. The opinion of such a man as Shattuck is worth more than the opinions of a thousand people, who only judge from external appearances.

The next question is—Did Pike, or did he not, pay proper attention to the child? Has he, or has he not, been guilty of neglect and inattention. These questions, gentlemen, are for you to decide. Was it for him to know, or not, that she was sick? She was in his care:—Was there nobody in Topsfield who could tell whether she was sick, or sullen? Was there no physician that he could have called in to examine her? For nearly five months she lived with him, before there was any difficulty—the night of the 7th of February was the first time she fouled the bed; after that time her conduct was certainly unaccountable and extraordinary. Whether it was the result of wilfulness, or disease, or insanity, the jury must judge. You will remember, gentlemen, that her father ran away insane, and is it impossible that her mind should be somewhat affected also—insanity displays itself under a thousand forms. This was in the winter be it remembered. What should Mr. Pike have done in his excessively difficult situation, supposing her to be sullen? What should he have done, putting down every thing that has been said against her as true—admitting that she was wilful? Nobody would complain of the rod being used, or does complain; but humanity and the law will not permit a punishment, that will endanger the health, or degrade the character of the child—a punishment that may bring on disease. Suppose she was as bad, as you can conceive a child to be, was it, or was it not, a discreet punishment to send her up into a cold room to sit alone from hour to hour, on such a morning as the present for instance, when the ground and the tops of our houses are covered with snow? Was that a proper punishment, or not?—The evidence is that she was so kept for a considerable time—when the boarders were *in*, she was *up*; and if she was not frozen, she must have been chilled. Gentlemen, take this case home to yourselves—try the case, as if it was your own child. See if this be a proper punishment, or cruelty. You are the

judges, if this be cruel or proper. The plaintiff may think it proper, but you are to decide that question--not he. I think this view of the case of considerable importance.

On the other point, if you believe that she was then afflicted with the internal disease, which was upon her when she returned home, and that that disease produced a morbid state of mind, which rendered her unable to take care of herself, and preserve herself clean, what should Mr. Pike have done? And here comes in the contract: If he became dissatisfied, he was to bring her home. They say that they attempted to reclaim her, and did not send her back to her mother on account of her mother's poverty; that they kept her out of charity to the mother. But in connection with this charitable consideration for the condition of the mother, you will recollect Mr. Pike's declaration about the child—"Destitute she came, and destitute she shall return." Mr. Pike must have had an opinion, that she was diseased, for he said to the overseer of the Alm-House, "I am afraid she will die on my hands." Was this putting her in the Alm-House, a fulfilment of the terms upon which he took her? Was the mother or Mr. Pike to be the judge of the comfort of the mother's home? What says the mother?—"Bring my child home if she is sick." The mother knew, that in Boston, if she was poor, and could not provide for her sick child, that she had only to make her wants known, and relief could be instantly obtained. In Boston, there are ever to be found persons like Mrs. Colby, prompt to afford relief to distress, whenever they are apprised of its existence. In Boston, an honest but humble family, can always obtain relief in sickness, if they will only let their distress be known. Whenever they can step over their pride, and disclose their humble state, there is no place in the world where they will receive prompter assistance, than in Boston. That she could be taken care of—good care—at her mother's, is proved by the fact that she was taken good care of, after she returned. Dr. Shattuck tells you she required the most expensive medicines, and she had them, but how they were furnished, or who furnished them, we dont know—only we know they were not provided by the mother, being beyond her means. Mr. Pike then did not fulfil the bargain, and there was no reason, why he should not.

The child complained before she left Mr. Pike's and while a the Alms-House, though she would play a little, and had an appetite.—Would she have complained, if she was not sick? When you get her down to Boston, before Dr. Shattuck, you find out the whole truth. You must judge whether, if she was sick, at that time, she was treated as you would have a child treated, or Mr. Pike would have treated a child of his own. In deliberating upon this whole case, you are to take all the evidence, having reference to the conduct of both the

plaintiff and the defendants; and it is desirable, to avoid further litigation between the parties, that you should agree on a verdict of some kind. If you find that the justifications are made out, you will find for the defendants, but if you think they are not made out, you wll find for the plaintiff—but then the range of damages is very great and entirely with you—you can range from the smallest possible sum up to the ten thousand dollars. His honor expressed a hope that no juror would, at once, come to a conclusion not to give Mr. Pike a copper, because some unfavorable circumstances appeared against him in the evidence; and on the other hand, he hoped that no juror would retire with a fixed determination to give the highest damages, because the defendants had failed to prove every thing they had alleged in the pleas in justification. On the contrary, he would recommend to the jury to deliberate together upon the whole matter, and with the single object of rendering strict justice to both parties.

The law in such a case as the present implies malice, but here there is no pretence of express malice, but then printers must be careful. The defendants are the publishers of a newspaper, and it is there duty to print whatever tends to the public good, if *true*, whether it relates to political or private persons. I do not agree with my friend Mr. Choate, that they ought to be at liberty to publish falsehood even about political men—the truth for me, and gentlemen I believe that you also prefer the truth, even in politics. The duty of printers is an exceedingly difficult one to perform, and they ought to be extremely cautious, but to rebut express malice, it is enough for them to show that they have used reasonable care. I consider the fact of the child's having been exposed, as being established. It could not have been from kindness, that they sent her into a cellar, after sitting in a cold chamber all day. There is no proof but what she had a sufficient supply of food—there appears to be no difficulty upon that point—the charge about the Indian meal and water is not made out.—It is well known to medical men, that because there is a great appetite, it does not follow that therefore there is health; and that great eating does not necessarily nourish, when the system is deranged. How far being so deeply diseased that food freely partaken of ceased to nourish, was to be "reduced to the lowest state of wretchedness," the jury would consider.

If I were a juror, I should lay down some stakes to guide me in this case—there are some unquestionable facts in the case, that are not denied. It was unpleasant to remark upon the manner of witnesses, but the jury would remember one who testified that she thought the child was counterfeiting, and they would also recollect Dr. Jackson's answer when the question was particularly put to him.

It has been contended that the second publication was more

libellous than the first—the jury will consider under what circumstances that article appeared, and give the defendant credit for what he did do—for his going to see the child before he published it. He is entitled to the benefit of this act of precaution. The question is asked, why the defendants do not put the child on the stand as a witness? That, gentlemen, is impossible: they cannot put on to the stand the child that Mr. Greene saw—low, emaciated, at the point of death. They can put on to the stand a lively, healthy child—not the child that Dr. Shattuck saw and described. The defendants rest their case on the weight of evidence arising from her then condition. She was free for the plaintiff to call; it is true, that he would not have been at liberty after calling her, to impeach her general character, but he might have contradicted her upon any particular fact. There are two circumstances in the case, gentlemen, that I cannot allude to with any degree of satisfaction—the assafœtida and the excrement:—with regard to the assafœtida, there may, perhaps, be different opinions, considering the situation in which the plaintiff was placed. As to the other, I can say nothing; but you must always bear in mind, that she was but a child.

The impartial design of giving the testimony in this remarkable cause, with considerable minuteness, having increased the size of the pamphlet much beyond our original expectations, has necessarily compelled the REPORTER to condense Judge PUTNAM's lucid and practical charge to the Jury, but he believes that the preceding outline embraces the material points enlarged upon by His Honor. The same explanation is due to the eminent counsel who were engaged in the cause, for the extremely brief sketches of their able arguments which are given in this Report.

The cause was committed to the Jury about half past eleven, and in an hour they sent notice to Judge Putnam, that they had agreed upon a verdict. At half past two, they came into Court and returned a verdict for the Plaintiff, giving ONE DOLLAR DAMAGES. The legal effect of this verdict throws the costs of Court on to the Plaintiff, with the exception of TWENTY-FIVE CENTS.

L76865 vol. 19